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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

ADAM SMOTKIN, individually and on
behalf of all those similarly situated,

Plaintiff,

v.

HEADWAY TECHNOLOGIES, INC.,
HUTCHINSON TECHNOLOGY INC.,
MAGNECOMP PRECISION
TECHNOLOGY PUBLIC CO. LTD., NAT
PERIPHERAL (DONG GUAN) CO., LTD.,
NAT PERIPHERAL (H.K.) CO., LTD.,
NHK SPRING CO. LTD., NHK
INTERNATIONAL CORPORATION, NHK
SPRING (THAILAND) CO., LTD., NHK
SPRING PRECISION (GUANGZHOU) CO.,
LTD., SAE MAGNETICS (H.K.) LTD.,
AND TDK CORPORATION,

Defendants.

Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Adam Smotkin (“Plaintiff”), on behalf of himself and all others similarly situated (the “Classes” as defined below), files this Class Action Complaint against Defendants NHK Spring Co. Ltd., NHK International Corporation, NHK Spring (Thailand) Co., Ltd., NHK Spring Precision (Guangzhou) Co., Ltd., NAT Peripheral (Dong Guan) Co., Ltd., NAT Peripheral (H.K.) Co., Ltd.,¹ TDK Corporation, Magnecomp Precision Technology Public Co. Ltd., SAE Magnetism (H.K.) Ltd., Hutchinson Technology Inc., and Headway Technologies, Inc.,² (“Defendants”) for damages, injunctive relief and any other relief available as a result of Defendants’ violations of federal antitrust, state antitrust, unfair competition, consumer protection and unjust enrichment laws, and hereby demand a trial by jury. Plaintiff’s allegations are made on personal knowledge as to Plaintiff and Plaintiff’s own acts and upon information and belief as to all other matters, and are outlined as follows:

I. INTRODUCTION

1. Hard disk drives (“HDD”) are incorporated into electronic devices, such as desktop computers, laptops, gaming consoles, MP3 players, printers, and copy machines, or sold as stand-alone storage devices. An HDD uses a magnetic recording head to read from, and write onto, a spinning disk contained in the hard drive.

2. Suspension assemblies are an important component of the HDD because they hold the recording heads close to the disks and provide the electrical connection from the recording heads to the hard disk drives’ circuitry. According to Assistant Attorney General of the Department of Justice (“DOJ”) Antitrust Division Makan Delrahim, HDD suspension assemblies

¹ Defendants NHK Spring Co. Ltd., NHK International Corporation, NHK Spring (Thailand) Co., Ltd., NHK Spring Precision (Guangzhou) Co., Ltd., NAT Peripheral (Dong Guan) Co., Ltd., and NAT Peripheral (H.K.) Co., Ltd. are collectively referred to as the “NHK Defendants.”

² Defendants TDK Corporation, Magnecomp Precision Technology Public Co. Ltd., SAE Magnetism (H.K.) Ltd., Hutchinson Technology Inc. and Headway Technologies, Inc. are collectively referred to as the “TDK Defendants.”

1 are “critical to the operation and performance of electronic devices, and their impact on American
2 consumers and business is direct and substantial.”³

3 3. Plaintiff brings this action against Defendants – who, at all relevant times, are
4 manufacturers and suppliers of HDD suspension assemblies throughout and into the United States
5 - and their co-conspirators as a result of their unlawful conduct in contracting, combining, or
6 conspiring to fix, raise, maintain, and/or stabilize prices of HDD suspension assemblies from
7 approximately May 2008 to at least April 2016.⁴

9 4. Defendants’ illegal and anticompetitive conduct resulted in their exchange of
10 pricing information with one another, which they used to their advantage in their negotiations with
11 U.S. and foreign customers for the sale of HDD suspension assemblies, which ultimately became
12 the critical component in HDDs for sale in, or delivery to, the U.S. and elsewhere.

13 5. The NHK and TDK Defendants, along with their affiliates and/or subsidiaries, have
14 maintained a 90% dominance of the global market for HDD suspension assemblies.⁵

16 6. The potential price-fixing of HDD suspension assemblies have been the subject of
17 investigations by the United States government as well as foreign governments since at least 2016.

18 7. In fact, on July 29, 2019, the DOJ announced that the NHK Defendants agreed to
19 plead guilty and pay a \$28.5 million criminal fine, subject to court approval, as a result of its
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24 ³ *Japanese Manufacturer Agrees to Plead Guilty to Fixing Prices for Suspension Assemblies Used*
25 *in Hard Disk Drives*, DOJ (Jul. 29, 2019), [https://www.justice.gov/opa/pr/japanese-manufacturer-](https://www.justice.gov/opa/pr/japanese-manufacturer-agrees-plead-guilty-fixing-prices-suspension-assemblies-used-hard-disk)
[agrees-plead-guilty-fixing-prices-suspension-assemblies-used-hard-disk](https://www.justice.gov/opa/pr/japanese-manufacturer-agrees-plead-guilty-fixing-prices-suspension-assemblies-used-hard-disk). (last visited Aug. 8,
2019).

26 ⁴ *See United States of America v. NHK Spring Co., Ltd.*, 2:19-cr-20503 (E.D. Mich. Jul. 29, 2019),
ECF No. 1.

27 ⁵ *See TDK Corp., NHK Spring Accused of Hard Disk Parts Price Fixing* (Jul. 31, 2019),
28 [https://news.bloomberglaw.com/class-action/tdk-corp-nhk-spring-accused-of-hard-disk-parts-](https://news.bloomberglaw.com/class-action/tdk-corp-nhk-spring-accused-of-hard-disk-parts-price-fixing?utm_source=rss&utm_medium=CLNW&utm_campaign=0000016c-48b9-d42c-a5ee-4abd283e0001)
[price-fixing?utm_source=rss&utm_medium=CLNW&utm_campaign=0000016c-48b9-d42c-](https://news.bloomberglaw.com/class-action/tdk-corp-nhk-spring-accused-of-hard-disk-parts-price-fixing?utm_source=rss&utm_medium=CLNW&utm_campaign=0000016c-48b9-d42c-a5ee-4abd283e0001)
[a5ee-4abd283e0001](https://news.bloomberglaw.com/class-action/tdk-corp-nhk-spring-accused-of-hard-disk-parts-price-fixing?utm_source=rss&utm_medium=CLNW&utm_campaign=0000016c-48b9-d42c-a5ee-4abd283e0001). (last visited Aug. 8, 2019).

1 participation in a conspiracy to suppress and eliminate competition by fixing prices of HDD
2 suspension assemblies sold in the United States and elsewhere.⁶

3 8. Additionally, in July 2016, the Japanese Fair Trade Commission (“JFTC”) also
4 searched and investigated both the NHK and TDK Defendants (or certain of their subsidiaries) on
5 suspicion that the companies fixed prices for HDD suspension components.⁷ On February 9,
6 2018, the JFTC issued a cease and desist order to both the NHK and TDK Defendants and found
7 that they substantially restrained competition in the HDD suspension assemblies market by
8 agreeing to maintain sales prices.

9 9. The DOJ also opened an investigation into the HDD suspension assemblies market.
10 On July 26, 2016 Defendant Hutchinson Technology, Inc. received a letter from the DOJ
11 requesting documents relating to the investigation.⁸

12 10. In April 2018, Brazilian antitrust authorities also conducted an investigation
13 regarding allegations that Defendant TDK Corporation and four other companies colluded from
14 2003 to May 2016 to fix prices of HDD suspension assemblies. The allegations included
15 accusations that they had shared data and allocated customers to maintain artificially high prices
16 on HDD suspension assemblies.

17 11. The Defendants and their co-conspirators participated in a combination and
18 conspiracy to suppress and eliminate competition for HDD suspension assemblies by agreeing to
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23 ⁶ See *Japanese Manufacturer Agrees to Plead Guilty to Fixing Prices for Suspension Assemblies*
24 *Used in Hard Disk Drives*, DOJ (Jul. 29, 2019), [https://www.justice.gov/opa/pr/japanese-](https://www.justice.gov/opa/pr/japanese-manufacturer-agrees-plead-guilty-fixing-prices-suspension-assemblies-used-hard-disk)
25 [manufacturer-agrees-plead-guilty-fixing-prices-suspension-assemblies-used-hard-disk](https://www.justice.gov/opa/pr/japanese-manufacturer-agrees-plead-guilty-fixing-prices-suspension-assemblies-used-hard-disk); See *United*
26 *States of America v. NHK Spring Co., Ltd.*, 2:19-cr-20503 (E.D. Mich. Jul. 29, 2019), ECF No. 1.,
27 at 2-3.

28 ⁷ See *TDK, NHK Spring searched over alleged price cartel* (Jul. 26, 2016),
[https://www.japantimes.co.jp/news/2016/07/26/business/corporate-business/tdk-nhk-spring-](https://www.japantimes.co.jp/news/2016/07/26/business/corporate-business/tdk-nhk-spring-searched-alleged-price-cartel/#.XUxmXl3tye8)
[searched-alleged-price-cartel/#.XUxmXl3tye8](https://www.japantimes.co.jp/news/2016/07/26/business/corporate-business/tdk-nhk-spring-searched-alleged-price-cartel/#.XUxmXl3tye8). (last visited Aug. 8, 2019).

⁸ *US: Hutchinson cooperating with DOJ in hard drive investigation*, (Jul. 31, 2016),
[https://www.competitionpolicyinternational.com/us-hutchinson-cooperating-with-doj-with-hard-](https://www.competitionpolicyinternational.com/us-hutchinson-cooperating-with-doj-with-hard-drive-investigation/)
[drive-investigation/](https://www.competitionpolicyinternational.com/us-hutchinson-cooperating-with-doj-with-hard-drive-investigation/). (last visited Aug. 8, 2019).

1 rig bids for, and to fix, stabilize, and maintain the prices of HDD suspension assemblies sold in the
2 United States and elsewhere. The combination and conspiracy engaged in by the Defendants and
3 their co-conspirators was an unreasonable restraint of interstate and foreign trade and commerce in
4 violation of the Sherman Antitrust Act, 15 U.S.C. § 1, and state antitrust, unfair competition,
5 consumer protection laws, and the common law of unjust enrichment.
6

7 12. As a direct and proximate result of the anticompetitive and unlawful conduct
8 alleged herein, Plaintiff and the Classes (as defined below) paid more during the Class Period for
9 HDD suspension assemblies than they otherwise would have paid in a competitive market, and
10 have thereby suffered antitrust injury to their business or property.

11 13. Accordingly, Plaintiff seeks to represent all persons and entities who, during the
12 period from and including May 2008 through such time as the anticompetitive effects of the
13 Defendants' conduct ceased (the "Class Period"), indirectly purchased a product not for resale,
14 which included as a component part one or more HDD suspension assemblies that were
15 manufactured or sold by the Defendants, any current or former subsidiary of the Defendants, or
16 any co-conspirator of the Defendants.
17

18 **II. JURISDICTION AND VENUE**

19 14. Plaintiff brings this action pursuant to Section 16 of the Clayton Act (15 U.S.C. §
20 26) and against Defendants for violating Section 1 of the Sherman Antitrust Act (15 U.S.C. § 1).
21 Accordingly, Plaintiff seeks equitable and injunctive relief as well as assert claims for actual and
22 exemplary damages pursuant to state antitrust, unfair competition, consumer protection and unjust
23 enrichment laws. Plaintiff also seeks to obtain restitution, recover damages and secure other relief
24 against the Defendants for violations of those state laws. Plaintiff and the Classes also seek
25 attorneys' fees, costs, and other expenses under federal and state law.
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1 15. This Court's jurisdiction over the subject matter of this action is proper pursuant to
2 Section 16 of the Clayton Act (15 U.S.C. § 26), Section 1 of the Sherman Antitrust Act (15 U.S.C.
3 § 1), and Title 28, United States Code, Sections 1331 and 1337. Likewise, this Court's
4 jurisdiction over the subject matter of the state law claims is proper pursuant to 28 U.S.C. §§
5 1332(d) and 1367, in that this is a class action in which the matter or controversy exceeds the sum
6 of \$5,000,000.00, exclusive of interests and costs, and in which some members of the proposed
7 Classes are citizens of a state different from some Defendants.
8

9 16. Personal jurisdiction over Defendants in this action is proper because each, either
10 directly or through the ownership and/or control of its subsidiaries, *inter alia*: (a) directly or
11 indirectly sold or marketed substantial quantities of HDD suspension assemblies throughout the
12 United States as a whole, including in this District; (b) had substantial aggregate contacts with the
13 United States, including in this District; (c) transacted business in the United States, including in
14 this District; or (d) engaged in an illegal price-fixing conspiracy that was directed at, and had a
15 direct, substantial, reasonably foreseeable and intended effect of causing injury to, the business or
16 property of persons and entities residing in, located in, or doing business throughout the United
17 States, including in this District. Defendants also conduct business throughout the United States,
18 including in this District, and they have purposefully availed themselves of the laws of the United
19 States.
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22 17. Because a substantial part of the events giving rise to Plaintiff's claims occurred in
23 this District, a substantial portion of the affected interstate trade and commerce discussed below
24 has been carried out in this District, and one or more of the Defendants reside, are licensed to do
25 business in, are doing business in, had agents in, or are found or transact business in this District,
26 venue is proper in this District pursuant to Section 12 of the Clayton Act (15 U.S.C. § 22), and 28
27 U.S.C. §§ 1391 (b), (c), and (d).
28

1 18. HDD suspension assemblies manufactured abroad by Defendants and sold for use
2 in products in the United States are goods brought into the United States for sale, and therefore
3 constitute import commerce. To the extent any HDD suspension assemblies are purchased in the
4 United States, and such HDD suspension assemblies do not constitute import commerce,
5 Defendants' activities with respect thereto, as more fully alleged herein during the Class Period,
6 had, and continue to have, a direct, substantial and reasonably foreseeable effect on United States
7 commerce. The anticompetitive conduct, and its effect on United States commerce described
8 herein, proximately caused antitrust injury in the United States.

10 19. Defendants' conduct alleged herein occurred both inside and outside of the United
11 States and caused direct, substantial, and reasonably foreseeable and intended anticompetitive
12 effects upon interstate commerce within the United States.

14 20. Defendants and their co-conspirators engaged in activities that were within the flow
15 of, and were intended to and did have a substantial effect on, interstate commerce of the United
16 States. Defendants' products are sold in the flow of interstate commerce.

17 21. As a result of Defendants' unlawful activities, commerce throughout the United
18 States was substantially affected, causing injury to Plaintiff and members of the Classes.
19 Defendants' conduct, directly and through their agents, in fixing, raising, maintaining and/or
20 stabilizing prices, and allocating the market and customers in the United States for HDD
21 suspension assemblies, which conspiracy unreasonably restrained trade and adversely affected the
22 market for HDD suspension assemblies, affected all states.

24 22. Persons in the United States who purchased a product in the United States not for
25 resale which included an HDD suspension assembly was adversely affected by Defendants'
26 conspiracy and wrongdoing, as described herein.

1 **III. THE PARTIES**

2 **A. Plaintiff**

3 23. Plaintiff Adam Smotkin is a resident of New York. During the Class Period, he
4 purchased at least one HDD suspension assembly indirectly from at least one Defendant, and was
5 injured in his business or property as a result of Defendants' unlawful conduct alleged herein
6

7 **B. NHK Defendants**

8 24. Defendant NHK Spring Co. Ltd. is a Japanese corporation with its principal place
9 of business in Yokohama, Japan. NHK Spring Co. Ltd., directly and/or through its subsidiaries,
10 which it wholly owned and/or controlled, manufactured, marketed, sold, serviced and/or supplied
11 HDD suspension assemblies that were sold and purchased throughout the United States, including
12 in this District, during the Class Period.
13

14 25. Defendant NHK International Corporation is a U.S. subsidiary of NHK Spring Co.
15 Ltd. with its principal place of business located in Novi, Michigan. NHK International
16 Corporation, directly and/or through its subsidiaries, which it wholly owned and/or controlled,
17 manufactured, marketed, sold, serviced and/or supplied HDD suspension assemblies that were
18 sold and purchased throughout the United States, including in this District, during the Class
19 Period.
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21 26. Defendant NHK Spring (Thailand) Co., Ltd. is a Thailand-based subsidiary of
22 NHK Spring Co. Ltd. NHK Spring (Thailand) Co., Ltd., directly and/or through its subsidiaries,
23 which it wholly owned and/or controlled, manufactured, marketed, sold, serviced and/or supplied
24 HDD suspension assemblies that were sold and purchased throughout the United States, including
25 in this District, during the Class Period.
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27 27. Defendant NHK Spring Precision (Guangzhou) Co., Ltd. is a Chinese corporation
28 with its principal place of business in Guangzhou, China. It is an affiliate of and wholly controlled

1 by NHK Spring Co. Ltd. NHK Spring Precision (Guangzhou) Co., Ltd., directly and/or through
2 its subsidiaries, which it wholly owned and/or controlled, manufactured, marketed, sold, serviced
3 and/or supplied HDD suspension assemblies that were sold and purchased throughout the United
4 States, including in this District, during the Class Period.

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6 28. Defendant NAT Peripheral (Dong Guan) Co., Ltd. is a Chinese corporation with its
7 principal place of business in Guangdong, China. It is an affiliate of and wholly controlled by
8 NHK Spring Co. Ltd. Defendant NAT Peripheral (Dong Guan) Co., Ltd., directly and/or through
9 its subsidiaries, which it wholly owned and/or controlled, manufactured, marketed, sold, serviced
10 and/or supplied HDD suspension assemblies that were sold and purchased throughout the United
11 States, including in this District, during the Class Period.

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13 29. Defendant NAT Peripheral (H.K.) Co., Ltd. is a Chinese corporation with its
14 principal place of business in Hong Kong, China. It is an affiliate of and wholly controlled by
15 NHK Spring Co. Ltd. Defendant NAT Peripheral (H.K.) Co., Ltd., directly and/or through its
16 subsidiaries, which it wholly owned and/or controlled, manufactured, marketed, sold, serviced
17 and/or supplied HDD suspension assemblies that were sold and purchased throughout the United
18 States, including in this District, during the Class Period.

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20 **C. TDK Defendants**

21 30. Defendant TDK Corporation is a Japanese corporation with its principal place of
22 business in Tokyo, Japan. TDK Corporation, directly and/or through its affiliates, which it wholly
23 owned and/or controlled, manufactured, marketed, sold, serviced and/or supplied HDD suspension
24 assemblies that were sold and purchased throughout the United States, including in this District,
25 during the Class Period.

26 31. Defendant Magnecomp Precision Technology Public Co. Ltd. is a Thai corporation
27 with its principal place of business in Ayutthaya, Thailand. It is an affiliate of and wholly
28

1 controlled by TDK Corporation. Defendant Magnecomp Precision Technology Public Co. Ltd.,
2 directly and/or through its affiliates, which it wholly owned and/or controlled, manufactured,
3 marketed, sold, serviced and/or supplied HDD suspension assemblies that were sold and
4 purchased throughout the United States, including in this District, during the Class Period.

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6 32. Defendant SAE Magnetics (H.K.) Ltd. is a Chinese corporation with its principal
7 place of business in Hong Kong, China. Defendant SAE Magnetics (H.K.) Ltd., directly and/or
8 through its affiliates, which it wholly owned and/or controlled, manufactured, marketed, sold,
9 serviced and/or supplied HDD suspension assemblies that were sold and purchased throughout the
10 United States, including in this District, during the Class Period.

11
12 33. Defendant Hutchinson Technology Inc. is a Minnesota corporation with its
13 principal place of business in Hutchinson, Minnesota. TDK Corporation acquired Hutchinson
14 Technology Inc. on October 6, 2016.⁹ It is an affiliate of and wholly controlled by TDK
15 Corporation. Hutchinson Technology Inc, directly and/or through its affiliates, which it wholly
16 owned or controlled, manufactured, marketed, sold, serviced and/or supplied HDD suspension
17 assemblies that were sold and purchased throughout the United States, including in this District,
18 during the Class Period.

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20 34. Defendant Headway Technologies, Inc. is a Delaware corporation with its principal
21 place of business in Milpitas, California. It is an affiliate of and wholly controlled by TDK
22 Corporation. Defendant Headway Technologies, Inc., directly and/or through its affiliates,
23 manufactured, marketed, sold, serviced and/or supplied HDD suspension assemblies that were
24 sold and purchased throughout the United States, including in this District, during the Class
25 Period.

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27 ⁹ See *TDK Corporation Announces Completion of Hutchinson Acquisition*, TDK Global (Oct. 6,
28 2016), https://www.tdk.com/corp/en/news_center/press/201610062540.htm. (last visited Aug. 8, 2019).

1 **IV. UNNAMED AGENTS AND CO-CONSPIRATORS**

2 35. Defendants' officers, agents, employees, or representatives were authorized and/or
3 ordered, or completed, the acts alleged against the Defendants herein, while actively engaged in
4 the management and operation of Defendants' business or affairs.

5 36. All references herein to any act, deed, or transaction of any corporation, means that
6 the corporation engaged in the act, deed, or transaction by or through its officers, directors, agents,
7 employees, or representatives while they were actively engaged in the management, direction,
8 control, or transaction of the corporation's business or affairs.

9 37. Each Defendant or co-conspirator acted as the principal, agent, or joint venture of,
10 or for, other Defendants and co-conspirators with respect to the acts, violations, and common
11 course of conduct alleged by Plaintiff. Each Defendant and co-conspirator that is a subsidiary of a
12 foreign parent acts as the United States agent for HDD suspension assemblies made by its parent
13 company.

14 38. There are individuals and other entities that manufacture and supply HDD
15 suspension assemblies whose identities are currently unknown to Plaintiff. These individuals
16 and/or entities, who are not named as Defendants in this Complaint, may have participated as co-
17 conspirators in the violations alleged herein and may have performed acts and made statements in
18 furtherance thereof. Plaintiff continue to conduct an investigation to identify these individuals
19 and/or entities and reserve the right to name some or all of them as Defendants at a later date.

20 **V. FACTUAL ALLEGATIONS**

21 **A. HDDs and Suspension Assemblies**

22 39. An HDD is a storage device for digital content and information. HDDs can be
23 stand-alone external storage devices or fully integrated into another piece of hardware, such as a
24 desktop or laptop computer. HDDs store documents, pictures, music, videos, programs or
25

1 applications, operating systems, as well as other digital content. Many electronic devices require
2 an HDD to function.

3 40. HDDs use magnetism to write, retrieve and store vast amounts of information
4 electronically.¹⁰ They are comprised of, among other things, spinning magnetic disks and
5 magnetic heads that fly over the disks, reading and writing the information contained on the disks
6 (see Figure 1).¹¹

7
8 41. HDD suspension assemblies are a critical component of HDDs.¹² HDD suspension
9 assemblies hold the magnetic heads in position over the disks.¹³ Thus, HDD suspension
10 assemblies are essential to the functioning of HDDs.

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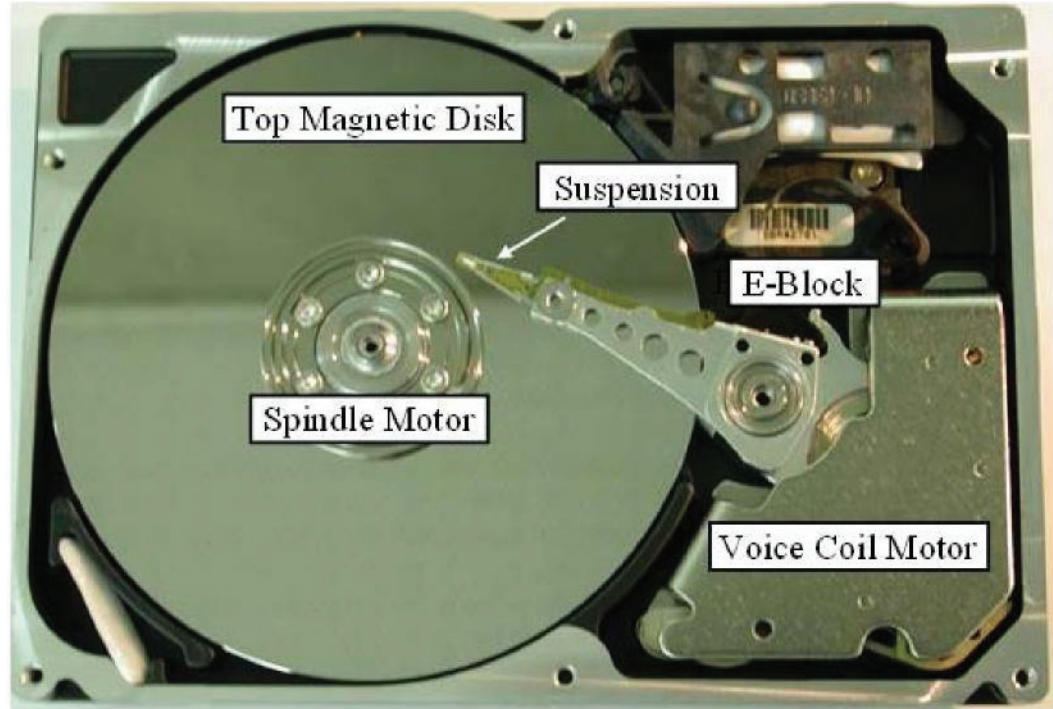
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23 ¹⁰ *Hard Drives*, EXPLAINTHATSTUFF, <https://www.explainthatstuff.com/harddrive.html>. (last
visited Aug. 8, 2019).

24 ¹¹ *Id.*; see also *Hard Disk Drives*, TEXAS A&M UNIVERSITY, <https://microtribodynamics.engr.tamu.edu/hard-disk-drives/>. (last visited Aug. 8, 2019).

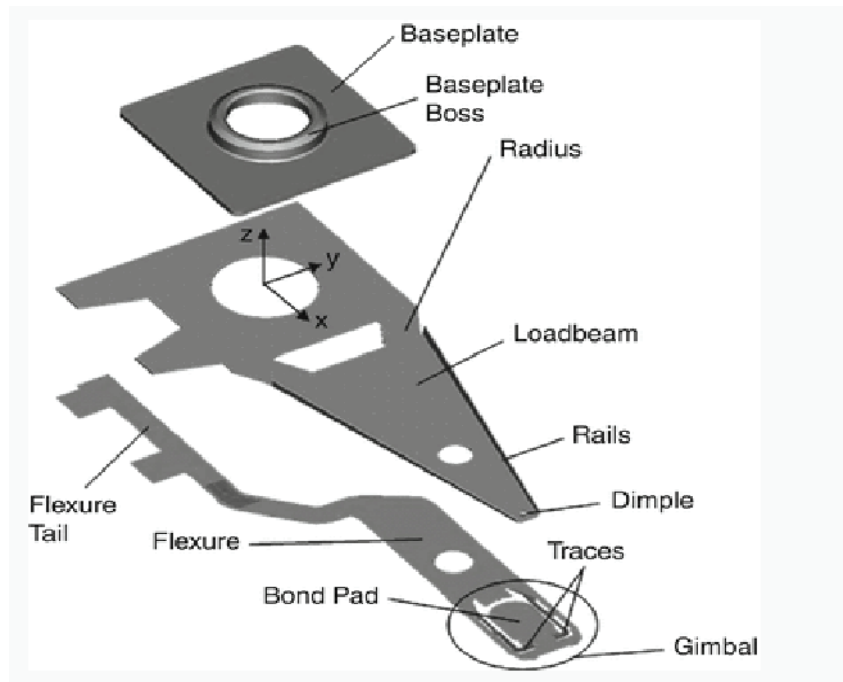
25 ¹² See *Hutchinson Shares Extend Slide on Continued FTC Antitrust Review*,
THE STREET (Jan. 5, 2016),
26 [https://www.thestreet.com/story/13412469/1/hutchinson-shares-keep-falling-on-extended-ftc-
antitrust-review.html](https://www.thestreet.com/story/13412469/1/hutchinson-shares-keep-falling-on-extended-ftc-antitrust-review.html). (last visited Aug. 8, 2019).

27 ¹³ See *Hard Drives*, EXPLAINTHATSTUFF, <https://www.explainthatstuff.com/harddrive.html>. (last
28 visited Aug. 8, 2019).

(Figure 1)¹⁴



(Figure 2: HDD Suspension Assembly)¹⁵



¹⁴ See *Hard Disk Drives*, TEXAS A&M UNIVERSITY, <https://microtribodynamics.engr.tamu.edu/hard-disk-drives/>. (last visited Aug. 8, 2019).

¹⁵ *Suspension Assembly for Hard Disk Drive*, Encyclopedia of Tribology, https://link.springer.com/referenceworkentry/10.1007%2F978-0-387-92897-5_1140. (last visited Aug. 8, 2019).

42. Manufacturers and suppliers of HDD suspension assemblies sell them directly to HDD manufacturers, which in turn sell HDDs containing the HDD suspension assemblies to manufacturers of products that include HDDs or to consumers. In 2018, global unit shipments of HDDs were nearly 400 million.¹⁶ One study predicts HDD shipments will increase in the coming years.¹⁷

B. Unlawful Conspiracy to Fix Prices of HDD Suspension Assemblies and Market Allocation Agreement.

43. From May 2008 to April 2016, Defendants engaged in a conspiracy consisting of a continuing agreement, understanding, and concert of action to refrain from competing on prices for, fixing the prices of, and allocating their respective market shares for HDD suspension assemblies to be sold in the United States and elsewhere.¹⁸

44. In fact, on July 29, 2019, Defendant NHK Spring Co. Ltd. agreed to plead guilty and pay a \$28.5 million fine for its role in the global conspiracy alleged herein.¹⁹

45. To carry out their conspiracy, Defendants engaged in a variety of unlawful activities, such as:

a. engaging in discussions and attending meetings during which they reached agreements to refrain from competing on prices for, fixing the prices of, and allocating their respective market shares for HDD suspension assemblies;

¹⁶ *Worldwide Unit Shipments of Hard Disk Drives (HDD) from 1976 to 2022 (in millions)*, STATISTA, <https://www.statista.com/statistics/398951/global-shipment-figures-for-hard-disk-drives/>. (last visited Aug. 8, 2019).

¹⁷ *Id.*

¹⁸ *See United States of America v. NHK Spring Co., Ltd.*, 2:19-cr-20503 (E.D. Mich. Jul. 29, 2019), ECF No. 1.

¹⁹ *See Japanese Manufacturer Agrees to Plead Guilty to Fixing Prices for Suspension Assemblies Used in Hard Disk Drives*, DOJ (Jul. 29, 2019), <https://www.justice.gov/opa/pr/japanese-manufacturer-agrees-plead-guilty-fixing-prices-suspension-assemblies-used-hard-disk>. (last visited Aug. 8, 2019).

- 1 b. exchanging HDD suspension assemblies pricing information;
- 2 c. relying on their agreements not to compete and using the exchange pricing
- 3 information to inform their negotiations with U.S. and foreign customers;
- 4 d. selling HDD suspension assemblies in, or for delivery to, the United States
- 5 and elsewhere at collusive and noncompetitive prices;
- 6 e. accepting payment for HDD suspension assemblies sold in, or for delivery
- 7 to, the United States and elsewhere at collusive and noncompetitive prices.
- 8

9 **C. The DOJ and JFTC Investigations**

10 46. In July 2016, the Japanese Fair Trade Commission (“JFTC”) investigated the NHK
 11 and TDK Defendants based on suspicion that they were in violation of antitrust laws. Ultimately,
 12 on February 9, 2018, the JFTC issued a cease and desist order to the NHK and TDK Defendants
 13 and found that they substantially restrained competition in the HDD suspension assemblies market
 14 by agreeing to maintain sales prices.

15 47. The DOJ also opened an investigation regarding HDD suspension assemblies. On
 16 July 26, 2016, Defendant Hutchinson Technology Inc. received a letter from the DOJ requesting
 17 documents relating to the investigation and expressed its intent to cooperate.²⁰ At the time
 18 Hutchinson received the DOJ’s letter, TDK Corporation’s pending acquisition of Hutchinson
 19 Technology Inc. was under review by the U.S. Federal Trade Commission.²¹

20 **D. Other Global Investigations**

21 48. In January 2018, it was reported that South Korea’s antitrust regulator, KFTC, was
 22 investigating suspected collusion by manufacturers of HDD suspension assemblies.
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 24
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26 ²⁰ See *US: Hutchinson cooperating with DOJ in hard drive investigation*, (July 31, 2016),
 27 [https://www.competitionpolicyinternational.com/us-hutchinson-cooperating-with-doj-with-hard-](https://www.competitionpolicyinternational.com/us-hutchinson-cooperating-with-doj-with-hard-drive-investigation/)
 28 [drive-investigation/](https://www.competitionpolicyinternational.com/us-hutchinson-cooperating-with-doj-with-hard-drive-investigation/), (last visited Aug. 8, 2019).

²¹ *Id.*

1 49. In April 2018, Brazilian antitrust authorities launched an investigation into
2 allegations that Defendant TDK Corporation and four other companies colluded from 2003 to May
3 2016 to fix prices of HDD suspension assemblies. It was alleged that they shared data and
4 allocated customers to maintain artificially high prices on HDD suspension assemblies used in
5 hard disks.

6
7 **E. The HDD Suspension Assemblies Market is Susceptible to Antitrust**
8 **Violations.**

9 50. The characteristics of the HDD suspension assemblies market in the United States
10 are conducive to a price-fixing agreement. Specifically, the HDD suspension assemblies market is
11 highly concentrated, has high barriers to entry, and exhibits inelasticity of demand. Together,
12 these characteristics increase the probability and feasibility of anticompetitive conduct in the HDD
13 suspension assemblies market.

14 **1. The HDD Suspension Assemblies Market is Highly Concentrated.**

15 51. The demand for HDD suspension assemblies depends on the demand for HDDs,
16 which in turn is driven by demand for storage, primarily generated by increasingly complex
17 software.

18 52. In the 1980s, there were numerous suppliers of HDD suspension assemblies and the
19 market was quite competitive, as there were more than twenty producers of HDD suspension
20 assemblies.

21 53. However, a process of market consolidation began in the 1990s, and by 2005 the
22 market had already become concentrated, with fewer than five major producers left in the market.

23 54. This trend has been further aggravated by two factors: (a) further consolidation
24 among HDD suspension assemblies manufacturers, and (b) the vertical integration of companies
25 like TDK Corporation that formerly depended on independent component suppliers in their
26 manufacturing of HDDs.
27
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1 55. In recent years, market consolidation has continued to the point where globally,
2 there are now only two major suppliers of HDD suspension assemblies: TDK Corporation and
3 NHK Spring Co. Ltd. For example, TDK Corporation acquired a formerly independent HDD
4 suspension assemblies manufacturer in 2007 and had fully integrated that acquisition by 2009.

5 56. Hutchinson Technology Inc., at one time the largest manufacturer of HDD
6 suspension assemblies, was acquired by Defendant TDK Corporation in 2016. Prior to the
7 acquisition, Hutchinson Technology Inc. had gone through its own process of consolidation and
8 was a principal supplier of HDD suspension assemblies to Western Digital Corporation
9 (headquartered in San Jose, CA); Seagate Technology, LLC (Cupertino, CA); and SAE
10 Magnetics, Ltd/TKD Corporation (Tokyo, Japan). That business is now contained within the
11 TDK family.
12

13 **2. The HDD Suspension Assemblies Market Has High Barriers to Entry.**
14

15 57. When a market contains significant barriers to entry, new entrants are less likely to
16 enter the market. Accordingly, the presence of such barriers foster the development and
17 maintenance of anticompetitive conduct.

18 58. There are substantial barriers that preclude, reduce, or make more difficult entry
19 into the HDD suspension assemblies market. A new entrant into the business would have to face
20 costly and lengthy start-up costs, including multi-million dollar costs associated with
21 manufacturing plants and equipment, energy, transportation, distribution infrastructure, skilled
22 labor, and long-standing customer relationships.

23 59. Additionally, manufacturing HDD suspension assemblies require the ability to
24 produce precision assemblies in sufficient volume. As Defendant Hutchinson Technology Inc.
25 conceded, “We believe that the number of entities that have the technical capability and capacity
26
27
28

1 for producing precision suspension assemblies or components in large volumes will remain
2 small.”²²

3 60. Moreover, increased demand for other types of data storage technology, such as
4 those that utilize flash memory, limit opportunities for new entrants to the HDD suspension
5 assembly market, which caters to hard disk drives.²³

7 **3. The Demand for HDD Suspension Assemblies is Inelastic.**

8 61. The sensitivity of supply and demand to changes in one or the other is described in
9 terms of “elasticity.” Accordingly, demand is “inelastic” if an increase in the price of a product
10 results in only a small decline in the quantity sold of that product, if any. In other words,
11 customers have nowhere to turn for alternative, cheaper products of similar quality and so
12 continue to purchase despite a price increase.

13 62. For an antitrust violator to succeed making a profit by illegally raising prices above
14 competitive levels, demand must be relatively inelastic at competitive process. Otherwise,
15 increased prices would result in declining sales, revenues and profits, as customers purchased
16 substitute products or declined to buy altogether. Thus, inelastic demand is a market characteristic
17 that facilitates collusion, allowing producers to raise their prices without triggering customer
18 substitution and lost sales revenue.

19 63. Demand for HDD suspension assemblies is highly inelastic because there are no
20 close substitutes for these products. In addition, customers must purchase HDD suspension
21 assemblies as an essential part of an HDD (or product containing an HDD) even if the prices are
22 kept at a supra-competitive level.
23
24
25

26
27 ²² *Hutchinson Shares Extend Slide on Continued FTC Antitrust Review*, THE STREET (Jan. 5,
2016), <https://www.thestreet.com/story/13412469/1/hutchinson-shares-keep-falling-on-extended-ftc-antitrust-review.html>. (last visited Aug. 8, 2019).

28 ²³ *Id.*

1 **VI. TRADE AND COMMERCE AFFECTED**

2 64. Defendants and their co-conspirators' anticompetitive scheme has taken place in,
3 and affected the continuous flow of, interstate trade and commerce of the United States in
4 substantial ways throughout the Class Period, including (a) selling and distributing HDD
5 suspension assemblies in and throughout the United States; (b) using instrumentalities of interstate
6 commerce to manufacture, sell, distribute, and/or market HDD suspension assemblies throughout
7 the United States; and (c) manufacturing, selling, and shipping substantial quantities of HDD
8 suspension assemblies in a continuous and uninterrupted flow of interstate commerce to
9 customers.
10

11 65. Furthermore, the conspiracy alleged herein affected billions of dollars of
12 commerce. During the Class Period, Defendants collectively controlled approximately 90% of the
13 global market for HDD suspension assemblies. Defendants and their co-conspirators have
14 inflicted antitrust injury by artificially raising prices paid by Plaintiff and other entities who are
15 themselves engaged in commerce.
16

17 **VII. PLAINTIFF AND MEMBERS OF THE CLASSES SUFFERED**
18 **ANTITRUST INJURY.**

19 66. As a result of Defendants' conspiracy to fix prices of HDD suspension assemblies,
20 adverse effects on competition have occurred, including but not limited to:

- 21 (a) The restraint or elimination of price competition with respect to HDD suspension
22 assemblies;
23 (b) The fixing, raising, maintaining, or stabilizing of the price of HDD suspension
24 assemblies at artificially inflated levels;
25 (c) The deprivation of free and open competition among indirect purchaser of HDD
26 suspension assemblies; and
27
28

1 (d) The paying of artificially inflated prices by indirect purchasers for HDD suspension
2 assemblies.

3 67. During the Class Period, Plaintiff and the members of the Classes paid
4 supra-competitive prices for HDD suspension assemblies. HDD manufacturers and other
5 purchasers of HDD suspension assemblies passed on inflated prices to Plaintiff and the members
6 of the Classes. Those overcharges have unjustly enriched Defendants.

7
8 68. The markets for HDD suspension assemblies, HDDs, and products that incorporate
9 HDDs are inextricably linked and intertwined because the market for HDD suspension assemblies
10 exists to serve the HDD market. Without the HDDs and the products that incorporate HDDs, the
11 HDD suspension assemblies have little to no value because they have no independent utility.
12 Indeed, the demand for HDDs and products that incorporate HDDs creates the demand for HDD
13 suspension assemblies.

14
15 69. HDD suspension assemblies are identifiable, discrete physical products that remain
16 essentially unchanged when incorporated into an HDD. As a result, HDD suspension assemblies
17 follow a traceable physical chain of distribution from the Defendants to Plaintiff and the members
18 of the Classes, and costs attributable to HDD suspension assemblies can be traced through the
19 chain of distribution to Plaintiff and the members of the Classes.

20
21 70. The prices of HDD suspension assemblies also can be physically traced through the
22 supply chain to show that changes in the prices paid by direct purchasers of HDD suspension
23 assemblies affect prices paid by indirect purchasers for HDDs containing HDD suspension
24 assemblies.

25 71. While even a monopolist would increase its prices when the cost of its inputs
26 increased, the economic necessity of passing through cost changes increases with the degree of
27 competition a firm faces.

72. Professors Robert G. Harris (Professor Emeritus and former Chair of the Business and Public Policy Group at the Haas School of Business at the University of California at Berkeley) and Lawrence A. Sullivan (Professor of Law Emeritus at Southwestern Law School and author of the Handbook of the Law of Antitrust) – have acknowledged that “in a multiple-level chain of distribution, passing on monopoly overcharges is not the exception: it is the rule.”²⁴ Thus, it has been recognized that unlawful overcharges in a component normally result in higher prices for products containing that price-fixed component.

73. Likewise, Professor Jeffrey K. MacKie-Mason (Arthur W. Burks Professor for Information and Computer Science and Professor of Economics and Public Policy at the University of Michigan), has been quoted in a judicial context as stating:

As is well known in economic theory and practice, at least some of the overcharge will be passed on by distributors to end consumers. When the distribution markets are highly competitive, as they are here, all or nearly the entire overcharge will be passed on through to ultimate consumers...Both of Microsoft’s experts also agree upon the economic phenomenon of cost pass through, and how it works in competitive markets. This general phenomenon of cost pass through is well established in antitrust laws and economics as well.²⁵

74. Furthermore, the amount of the overcharge impacting the prices of products containing HDD suspension assemblies can be measured and quantified with precision. Commonly used and well-accepted economic models can be used to measure both the extent and the amount of the supra-competitive charge passed through the chain of distribution. Thus, the economic harm to Plaintiff and class members can be quantified.

75. For example, regression analysis has been frequently used to assess the impact of a price increase on one cost in a product (or service) that is an assemblage of costs. Thus, it is

²⁴ Robert G. Harris & Lawrence A. Sullivan, *Passing on the Monopoly Overcharge: A Comprehensive Policy Analysis*, 128 U. PA. L. REV. 269, 276 (1979) (Emphasis in original).

²⁵ Order re: Class Certification at 13-14, *Coordination Proceedings Special Title (Rule 1550(b)) Microsoft I-V Cases*, No. J.C.C.P. No. 4106, (Cal. Sup. Ct. Aug. 29, 2000).

possible to isolate and identify only the impact of an increase in the price of HDD suspension assemblies on prices for products containing HDD suspension assemblies, even though such products contain a number of other components whose prices may be changing over time. Furthermore, a regression model can explain how variation in the price of HDD suspension assemblies affects changes in the price of assembled products, such as computers. The price of HDD suspension assemblies would be treated as an independent or explanatory variable. The model can isolate how changes in the price of HDD suspension assemblies impact the price of products containing HDD suspension assemblies while controlling for the impact of other price-determining factors.

76. As a result of Defendants' anticompetitive conduct that violates the antitrust laws alleged herein, Plaintiff and the members of the Classes have been injured by having paid higher prices for HDD suspension assemblies than they would have paid in the absence of the Defendants' illegal contract, combination, or conspiracy, and, as a result, have suffered damages in an amount presently undetermined. This is an antitrust injury of the type that the antitrust laws were meant to punish and prevent.

VIII. PLAINTIFF'S CLAIMS ARE TIMELY.

A. Fraudulent Concealment Tolloed the Statute of Limitations.

77. Plaintiff repeats and re-allege the allegations set forth above.

78. Application of the doctrine of fraudulent concealment tolls the statute of limitations on the claims asserted herein by Plaintiff and the Classes. Plaintiff and members of the Classes did not discover, and could not discover through the exercise of reasonable diligence, the existence of the conspiracy alleged herein until July 26, 2016, the date that the JFTC's investigation of the NHK and TDK Defendants became public.

1 79. Before that time, Plaintiff and members of the Classes were unaware of
2 Defendants' unlawful conduct, and did not know before then that they were paying supra-
3 competitive prices for HDD suspension assemblies throughout the United States during the Class
4 Period. No information, actual or constructive, was ever made available to Plaintiff and members
5 of the Classes that even hinted to Plaintiff that they were being injured by Defendants' unlawful
6 conduct.

7
8 80. By its very nature, the Defendants' and their co-conspirators' anticompetitive
9 conspiracy was inherently self-concealing. HDD suspension assemblies are not exempt from
10 antitrust regulation and, thus, Plaintiff and members of the Classes reasonably considered the
11 HDD suspension assemblies industry to be a competitive industry. Accordingly, a reasonable
12 person under the circumstances would not have been alerted to begin to investigate the legitimacy
13 of Defendants' HDD suspension assemblies prices before July 26, 2016, the date of the JFTC
14 investigation.

15
16 81. Because the alleged conspiracy was self-concealing and affirmatively concealed by
17 Defendants and their co-conspirators, Plaintiff and members of the Classes had no knowledge of
18 the alleged conspiracy, or of any facts or information that would have caused a reasonably diligent
19 person to investigate whether a conspiracy existed, until July 26, 2016.

20
21 82. For these reasons, the statute of limitations applicable to Plaintiff's and the Classes'
22 claims was tolled and did not begin to run until July 26, 2016.

23 **B. Defendants' Actions are a Continuing Violation.**

24 83. Plaintiff repeats and re-allege the allegations set forth above.

25 84. In the alternative, this Complaint alleges a continuing course of conduct (including
26 conduct within the limitations periods), and Plaintiff and members of the Classes are entitled to
27 recover damages they suffered during the limitations period.
28

1 85. Plaintiff and members of the Classes had no knowledge of the combination or
2 conspiracy alleged herein, or of facts sufficient to place them on inquiry notice of the claims set
3 forth herein.

4 86. Plaintiff and members of the Classes are consumers who purchased HDDs
5 containing HDD assemblies for their own use and not for resale. No information in the public
6 domain was available to Plaintiff and members of the Classes prior to July 26, 2016. Moreover,
7 Plaintiff and members of the Classes had no direct contact or interaction with the Defendants and
8 had no means from which they could have discovered that the Defendants were engaged in the
9 conspiracy combination and conspiracy alleged herein before July 26, 2016.

11 87. Each time Defendants engaged in an unlawful act complained of here, Defendants
12 undertook an overt act that has inflicted harm on Plaintiff and other members of the Classes.

13 88. Because Defendants have engaged in a continuing course of conduct, Plaintiff's
14 claims are timely.

15
16 **IX. CLASS ACTION ALLEGATIONS**

17 89. Plaintiff brings this action on behalf of himself and as a class action under Rule
18 23(a) and (b)(2) of the Federal Rules of Civil Procedure, seeking equitable and injunctive relief on
19 behalf of the following class (the "Nationwide Class"):

20 All persons and entities who, during the Class Period, indirectly purchased
21 a product not for resale which included as a component part one or more
22 HDD suspension assemblies that were manufactured or sold by the
23 Defendants, any current or former subsidiary of the Defendants, or any co-
conspirator of the Defendants.

24 90. Plaintiff also brings this action on behalf of themselves and as a class action under
25 Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure seeking damages pursuant to state
26 antitrust, unfair competition, and consumer protection laws as well as common law unjust
27 enrichment on behalf of the following class (the "Damages Class"):

1 All persons and entities who, during the Class Period, in the
2 Indirect Purchaser States purchased a product not for resale which
3 included as a component part one or more HDD suspension
4 assemblies that were manufactured or sold by the Defendants, any
current or former subsidiary of the Defendants, or any co-
conspirator of the Defendants.

5 91. The Nationwide Class and the Damages Class are referred to herein as the
6 “Classes.” Excluded from the Classes are the Defendants, their parent companies, subsidiaries and
7 affiliates, any co-conspirators, federal governmental entities and instrumentalities of the federal
8 government, states and their subdivisions, agencies and instrumentalities, and persons who
9 purchased HDD suspension assemblies directly or for resale.

10 92. While Plaintiff does not know the exact number of the members of the Classes,
11 Plaintiff believes there are (at least) thousands of members in each Class.

12 93. Common questions of law and fact exist as to all members of the Classes. This is
13 particularly true given the nature of the Defendants’ conspiracy, which was generally applicable to
14 all the members of both Classes, thereby making appropriate relief with respect to the Classes as a
15 whole. Such questions of law and fact common to the Classes include, but are not limited to:

- 16 (a) Whether the Defendants and their co-conspirators engaged in a combination and
17 conspiracy among themselves to fix, raise, maintain or stabilize the prices of HDD
18 suspension assemblies sold in the United States;
19 (b) The identity of the participants of the alleged conspiracy;
20 (c) The duration of the alleged conspiracy and the acts carried out by Defendants and
21 their co-conspirators in furtherance of the conspiracy;
22 (d) Whether the alleged conspiracy violated the Sherman Act, as alleged in Count I of
23 this Complaint;
24 (e) Whether the alleged conspiracy violated state antitrust, unfair competition, and/or
25 consumer protection laws, as alleged in the Count II and Count III of this Complaint;
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1 (f) Whether the Defendants unjustly enriched themselves to the detriment of the
2 Plaintiff and the members of the Classes, thereby entitling Plaintiff and the members of the
3 Classes to disgorgement of all benefits derived by Defendants, as alleged in Count IV of
4 this Complaint;

5 (g) Whether the conduct of the Defendants and their co-conspirators, as alleged in this
6 Complaint, caused injury to the business or property of Plaintiff and the members of the
7 Classes;
8

9 (h) The effect of the alleged conspiracy on the prices of HDD suspension assemblies
10 sold in the United States during the Class Period;

11 (i) Whether Plaintiff and the members of the Classes had any reason to know or
12 suspect the conspiracy, or any means to discover the conspiracy;

13 (j) Whether the Defendants and their co-conspirators fraudulently concealed the
14 conspiracy's existence from Plaintiff and the members of the Classes;
15

16 (k) The appropriate injunctive and related equitable relief for the Nationwide Class;
17 and

18 (l) The appropriate class-wide measure of damages for the Damages Class.

19 94. Plaintiff's claims are typical of the claims of the members of the Classes, and
20 Plaintiff will fairly and adequately protect the interests of the Classes. Plaintiff and all members
21 of the Classes are similarly affected by the Defendants' wrongful conduct in that they paid
22 artificially inflated prices for HDD suspension assemblies purchased indirectly from the
23 Defendants and/or their co-conspirators.
24

25 95. Plaintiff's claims arise out of the same common course of conduct giving rise to the
26 claims of the other members of the Classes. Plaintiff's interests are coincident with, and not
27
28

1 antagonistic to, those of the other members of the Classes. Plaintiff is represented by counsel who
2 are competent and experienced in the prosecution of antitrust and class action litigation.

3 96. The questions of law and fact common to the members of the Classes predominate
4 over any questions affecting only individual members, including legal and factual issues relating
5 to liability and damages.

6 97. Class action treatment is a superior method for the fair and efficient adjudication of
7 the controversy, in that, among other things, such treatment will permit a large number of
8 similarly situated persons to prosecute their common claims in a single forum simultaneously,
9 efficiently and without the unnecessary duplication of evidence, effort and expense that numerous
10 individual actions would engender. The benefits of proceeding through the class mechanism,
11 including providing injured persons or entities with a method for obtaining redress for claims that
12 might not be practicable to pursue individually, substantially outweigh any difficulties that may
13 arise in the management of this class action.

14 98. The prosecution of separate actions by individual members of the Classes would
15 create a risk of inconsistent or varying adjudications, establishing incompatible standards of
16 conduct for the Defendants.

17 **X. CLAIMS FOR RELIEF**

18 **COUNT I**

19 **Violation of Section 1 of the Sherman Act**
20 **(on behalf of Plaintiff and the Nationwide Class)**

21 99. Plaintiff incorporates by reference the allegations in the preceding paragraphs.

22 100. Defendants and unnamed co-conspirators entered into and engaged in a contract,
23 combination, or conspiracy in unreasonable restraint of trade in violation of Section 1 of the
24 Sherman Act (15 U.S.C. § 1).
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1 101. The acts done by the Defendants as part of, and in furtherance of, their co-
2 conspirators' contract, combination, or conspiracy were authorized, ordered, or done by their
3 officers, agents, employees, or representatives while actively engaged in the management of their
4 affairs.

5 102. During the Class Period, Defendants and their co-conspirators entered into a
6 continuing agreement, understanding and conspiracy in restraint of trade to artificially fix, raise,
7 stabilize, and control prices for HDD suspension assemblies, thereby creating anticompetitive
8 effects.

9 103. The anticompetitive acts were intentionally directed at the United States market for
10 HDD suspension assemblies and had a substantial and foreseeable effect on interstate commerce
11 by raising and fixing prices for HDD suspension assemblies throughout the United States.

12 104. The conspiratorial acts and combinations have caused unreasonable restraints in the
13 markets for HDD suspension assemblies.

14 105. As a result of Defendants' unlawful conduct, Plaintiff and other similarly situated
15 indirect purchasers in the Nationwide Class who purchased HDD suspension assemblies have
16 been harmed by being forced to pay inflated, supra-competitive prices for HDD suspension
17 assemblies.

18 106. In formulating and carrying out the alleged agreement, understanding and
19 conspiracy, Defendants and their co-conspirators did those things that they combined and
20 conspired to do, including but not limited to the acts, practices and course of conduct set forth
21 herein.

22 107. Defendants conspiracy had the following effects, among others:

23 (a) Price competition in the market for HDD suspension assemblies has been
24 restrained, suppressed, and/or eliminated in the United States;

(b) Prices for HDD suspension assemblies sold by Defendants and their co-conspirators have been fixed, raised, maintained, and stabilized at artificially high, non-competitive levels throughout the United States; and

(c) Plaintiff and members of the Nationwide Class who purchased HDD suspension assemblies indirectly from Defendants and their coconspirators have been deprived of the benefits of free and open competition.

108. Plaintiff and members of the Nationwide Class have been injured and will continue to be injured in their business and property by paying more for HDD suspension assemblies purchased indirectly from Defendants and their coconspirators than they would have paid and will pay in the absence of the conspiracy.

109. The alleged contract, combination, or conspiracy is a per se violation of the federal antitrust laws.

110. Plaintiff and members of the Nationwide Class are entitled to an injunction against Defendants, preventing and restraining the violations alleged herein.

COUNT II
Violation of State Antitrust Statutes
(on behalf of Plaintiff and the Damages Class)

111. Plaintiff incorporates by reference the allegations in the preceding paragraphs.

112. During the Class Period, Defendants and their co-conspirators engaged in a continuing contract, combination or conspiracy with respect to the sale of HDD suspension assemblies in unreasonable restraint of trade and commerce and in violation of the various state antitrust and other statutes set forth below.

113. The contract, combination, or conspiracy consisted of an agreement among Defendants and their co-conspirators to fix, raise, inflate, stabilize, and/or maintain at artificially supra-competitive levels the prices for HDD suspension assemblies and to allocate customers for these products in the United States.

1 114. In formulating and effectuating this conspiracy, the Defendants and their co-
2 conspirators performed acts in furtherance of the combination and conspiracy, including:

3 (a) participating in meetings and conversations among themselves in the United
4 States and elsewhere during which they agreed to price HDD suspension
5 assemblies at certain levels, and otherwise to fix, increase, inflate, maintain, or
6 stabilize effective prices paid by Plaintiff and members of the Damages Class with
7 respect to HDD suspension assemblies sold in the United States;

8 (b) allocating customers and markets for HDD suspension assemblies in the
9 United States in furtherance of their agreements; and

10 (c) participating in meetings and conversations among themselves in the United
11 States and elsewhere to implement, adhere to, and police the unlawful agreements
12 they reached.
13

14 115. Defendants and their co-conspirators engaged in the actions described above for the
15 purpose of carrying out their unlawful agreements to fix, maintain, increase, or stabilize prices and
16 to allocate customers with respect to HDD suspension assemblies.
17

18 116. Defendants' anticompetitive acts described above were knowing and willful and
19 constitute violations or flagrant violations of the following state antitrust statutes.
20

21 117. Defendants have entered into an unlawful agreement in restraint of trade in
22 violation of the Arizona Revised Statutes, §§ 44-1401, *et. seq.*

23 (a) Defendants' combinations or conspiracies had the following effects: (1)
24 HDD suspension assemblies price competition was restrained, suppressed, and
25 eliminated throughout Arizona; (2) HDD suspension assemblies prices were raised,
26 fixed, maintained and stabilized at artificially high levels throughout Arizona; (3)
27 Plaintiff and members of the Damages Class were deprived of free and open
28

1 competition; and (4) Plaintiff and members of the Damages Class paid supra-
2 competitive, artificially inflated prices for HDD suspension assemblies.

3 (b) During the Class Period, Defendants' illegal conduct substantially affected
4 Arizona commerce.

5 (c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiff
6 and members of the Damages Class have been injured in their business and
7 property and are threatened with further injury.

8 (d) By reason of the foregoing, Defendants entered into agreements in restraint
9 of trade in violation of Ariz. Rev. Stat. §§ 44-1401, *et. seq.* Accordingly, Plaintiff
10 and members of the Damages Class seek all forms of relief available under Ariz.
11 Rev. Stat. §§ 44-1401, *et. seq.*
12

13
14 118. Defendants have entered into an unlawful agreement in restraint of trade in
15 violation of the California Business and Professions Code, §§ 16700, *et. seq.*

16 (a) During the Class Period, Defendants and their co-conspirators entered into
17 and engaged in a continuing unlawful trust in restraint of the trade and commerce
18 described above in violation of Section 16720, California Business and Professions
19 Code. Defendants, each of them, have acted in violation of Section 16720 to fix,
20 raise, stabilize, and maintain prices of, and allocate markets for, HDD suspension
21 assemblies at supra-competitive levels.

22
23 (b) The aforesaid violations of Section 16720, California Business and
24 Professions Code, consisted, without limitation, of a continuing unlawful trust and
25 concert of action among the Defendants and their coconspirators, the substantial
26 terms of which were to fix, raise, maintain, and stabilize the prices of, and to
27 allocate markets for, HDD suspension assemblies.
28

1 (c) For the purpose of forming and effectuating the unlawful trust, the
2 Defendants and their co-conspirators have done those things which they combined
3 and conspired to do, including but not limited to the acts, practices and course of
4 conduct set forth above and the following: (1) Fixing, raising, stabilizing, and
5 pegging the price of HDD suspension assemblies; and (2) Allocating among
6 themselves the production of HDD suspension assemblies.
7

8 (d) The combination and conspiracy alleged herein has had, *inter alia*, the
9 following effects: (1) Price competition in the sale of HDD suspension assemblies
10 has been restrained, suppressed, and/or eliminated in the State of California; (2)
11 Prices for HDD suspension assemblies sold by Defendants and their co-
12 conspirators have been fixed, raised, stabilized, and pegged at artificially high, non-
13 competitive levels in the State of California and throughout the United States; and
14 (3) Those who purchased HDD suspension assemblies directly or indirectly from
15 Defendants and their co-conspirators have been deprived of the benefit of free and
16 open competition.
17

18 (e) As a direct and proximate result of Defendants' unlawful conduct, Plaintiff
19 and members of the Damages Class have been injured in their business and
20 property in that they paid more for HDD suspension assemblies than they otherwise
21 would have paid in the absence of Defendants' unlawful conduct. As a result of
22 Defendants' violation of Section 16720 of the California Business and Professions
23 Code, Plaintiff and members of the Damages Class seek treble damages and their
24 cost of suit, including a reasonable attorney's fee, pursuant to Section 16750(a) of
25 the California Business and Professions Code.
26
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119. Defendants have entered into an unlawful agreement in restraint of trade in violation of the District of Columbia Code Annotated §§ 28-4501, *et. seq.*

(a) Defendants' combinations or conspiracies had the following effects: (1) HDD suspension assemblies price competition was restrained, suppressed, and eliminated throughout the District of Columbia; (2) HDD suspension assemblies prices were raised, fixed, maintained and stabilized at artificially high levels throughout the District of Columbia; (3) Plaintiff and members of the Damages Class were deprived of free and open competition; and (4) Plaintiff and members of the Damages Class paid supra-competitive, artificially inflated prices for HDD suspension assemblies.

(b) During the Class Period, Defendants' illegal conduct substantially affected District of Columbia commerce.

(c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiff and members of the Damages Class have been injured in their business and property and are threatened with further injury.

(d) By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of District of Columbia Code Ann. §§ 28-4501, *et. seq.* Accordingly, Plaintiff and members of the Damages Class seek all forms of relief available under District of Columbia Code Ann. §§ 28-4501, *et. seq.*

120. The Defendants have entered into an unlawful agreement in restraint of trade in violation of the Iowa Code §§ 553.1, *et. seq.*

(a) Defendants' combinations or conspiracies had the following effects: (1) HDD suspension assemblies price competition was restrained, suppressed, and eliminated throughout Iowa; (2) HDD suspension assemblies prices were raised,

1 fixed, maintained and stabilized at artificially high levels throughout Iowa; (3)
2 Plaintiff and members of the Damages Class were deprived of free and open
3 competition; and (4) Plaintiff and members of the Damages Class paid supra-
4 competitive, artificially inflated prices for HDD suspension assemblies.

5 (b) During the Class Period, Defendants' illegal conduct substantially affected
6 Iowa commerce.

7 (c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiff
8 and members of the Damages Class have been injured in their business and
9 property and are threatened with further injury.

10 (d) By reason of the foregoing, Defendants have entered into agreements in
11 restraint of trade in violation of Iowa Code §§ 553.1, *et. seq.* Accordingly, Plaintiff
12 and members of the Damages Class seek all forms of relief available under Iowa
13 Code §§ 553.1, *et. seq.*

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16 121. Defendants have entered into an unlawful agreement in restraint of trade in
17 violation of the Kansas Statutes Annotated, §§ 50-101, *et. seq.*

18 (a) Defendants' combinations or conspiracies had the following effects: (1)
19 HDD suspension assemblies price competition was restrained, suppressed, and
20 eliminated throughout Kansas; (2) HDD suspension assemblies prices were raised,
21 fixed, maintained and stabilized at artificially high levels throughout Kansas; (3)
22 Plaintiff and members of the Damages Class were deprived of free and open
23 competition; and (4) Plaintiff and members of the Damages Class paid supra-
24 competitive, artificially inflated prices for HDD suspension assemblies.

25 (b) During the Class Period, Defendants' illegal conduct substantially affected
26 Kansas commerce.
27
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(c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiff and members of the Damages Class have been injured in their business and property and are threatened with further injury.

(d) By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Kansas Stat. Ann. §§ 50101, *et. seq.* Accordingly, Plaintiff and members of the Damages Class seek all forms of relief available under Kansas Stat. Ann. §§ 50-101, *et. seq.*

122. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Maine Revised Statutes, Maine Rev. Stat. Ann. 10, §§ 1101, *et. seq.*

(a) Defendants' combinations or conspiracies had the following effects: (1) HDD suspension assemblies price competition was restrained, suppressed, and eliminated throughout Maine; (2) HDD suspension assemblies prices were raised, fixed, maintained and stabilized at artificially high levels throughout Maine; (3) Plaintiff and members of the Damages Class were deprived of free and open competition; and (4) Plaintiff and members of the Damages Class paid supra-competitive, artificially inflated prices for HDD suspension assemblies.

(b) During the Class Period, Defendants' illegal conduct substantially affected Maine commerce.

(c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiff and members of the Damages Class have been injured in their business and property and are threatened with further injury.

(d) By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Maine Rev. Stat. Ann. 10, §§ 1101, *et. seq.*

1 Accordingly, Plaintiff and members of the Damages Class seek all relief available
2 under Maine Rev. Stat. Ann. 10, §§ 1101, *et. seq.*

3 123. Defendants have entered into an unlawful agreement in restraint of trade in
4 violation of the Michigan Compiled Laws Annotated §§ 445.771, *et. seq.*

5 (a) Defendants' combinations or conspiracies had the following effects: (1)
6 HDD suspension assemblies price competition was restrained, suppressed, and
7 eliminated throughout Michigan; (2) HDD suspension assemblies prices were
8 raised, fixed, maintained and stabilized at artificially high levels throughout
9 Michigan; (3) Plaintiff and members of the Damages Class were deprived of free
10 and open competition; and (4) Plaintiff and members of the Damages Class paid
11 supra-competitive, artificially inflated prices for HDD suspension assemblies.
12

13 (b) During the Class Period, Defendants' illegal conduct substantially affected
14 Michigan commerce.
15

16 (c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiff
17 and members of the Damages Class have been injured in their business and
18 property and are threatened with further injury.

19 (d) By reason of the foregoing, Defendants have entered into agreements in
20 restraint of trade in violation of Michigan Comp. Laws Ann. §§ 445.771, *et. seq.*
21 Accordingly, Plaintiff and members of the Damages Class seek all relief available
22 under Michigan Comp. Laws Ann. §§ 445.771, *et. seq.*
23

24 124. Defendants have entered into an unlawful agreement in restraint of trade in
25 violation of the Minnesota Annotated Statutes §§ 325D.49, *et. seq.*

26 (a) Defendants' combinations or conspiracies had the following effects: (1)
27 HDD suspension assemblies price competition was restrained, suppressed, and
28

1 eliminated throughout Minnesota; (2) HDD suspension assemblies prices were
2 raised, fixed, maintained and stabilized at artificially high levels throughout
3 Minnesota; (3) Plaintiff and members of the Damages Class were deprived of free
4 and open competition; and (4) Plaintiff and members of the Damages Class paid
5 supra-competitive, artificially inflated prices for HDD suspension assemblies.

6
7 (b) During the Class Period, Defendants' illegal conduct substantially affected
8 Minnesota commerce.

9 (c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiff
10 and members of the Damages Class have been injured in their business and
11 property and are threatened with further injury.

12 (d) By reason of the foregoing, Defendants have entered into agreements in
13 restraint of trade in violation of Minnesota Stat. §§ 325D.49, *et. seq.* Accordingly,
14 Plaintiff and members of the Damages Class seek all relief available under
15 Minnesota Stat. §§ 325D.49, *et. seq.*
16

17 125. Defendants have entered into an unlawful agreement in restraint of trade in
18 violation of the Mississippi Code Annotated §§ 75-21-1, *et. seq.*

19 (a) Defendants' combinations or conspiracies had the following effects: (1)
20 HDD suspension assemblies price competition was restrained, suppressed, and
21 eliminated throughout Mississippi; (2) HDD suspension assemblies prices were
22 raised, fixed, maintained and stabilized at artificially high levels throughout
23 Mississippi; (3) Plaintiff and members of the Damages Class were deprived of free
24 and open competition; and (4) Plaintiff and members of the Damages Class paid
25 supra-competitive, artificially inflated prices for HDD suspension assemblies.
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1 (b) During the Class Period, Defendants' illegal conduct substantially affected
2 Mississippi commerce.

3 (c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiff
4 and members of the Damages Class have been injured in their business and
5 property and are threatened with further injury.

6 (d) By reason of the foregoing, Defendants have entered into agreements in
7 restraint of trade in violation of Mississippi Code Ann. §§ 75-21-1, *et. seq.*
8 Accordingly, Plaintiff and members of the Damages Class seek all relief available
9 under Mississippi Code Ann. §§ 75-21-1, *et. seq.*
10

11 126. Defendants have entered into an unlawful agreement in restraint of trade in
12 violation of the Nebraska Revised Statutes §§ 59-801, *et. seq.*
13

14 (a) Defendants' combinations or conspiracies had the following effects: (1)
15 HDD suspension assemblies price competition was restrained, suppressed, and
16 eliminated throughout Nebraska; (2) HDD suspension assemblies prices were
17 raised, fixed, maintained and stabilized at artificially high levels throughout
18 Nebraska; (3) Plaintiff and members of the Damages Class were deprived of free
19 and open competition; and (4) Plaintiff and members of the Damages Class paid
20 supra-competitive, artificially inflated prices for HDD suspension assemblies.

21 (b) During the Class Period, Defendants' illegal conduct substantially affected
22 Nebraska commerce.

23 (c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiff
24 and members of the Damages Class have been injured in their business and
25 property and are threatened with further injury.
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1 (d) By reason of the foregoing, Defendants have entered into agreements in
2 restraint of trade in violation of Nebraska Revised Statutes §§ 59-801, *et. seq.*
3 Accordingly, Plaintiff and members of the Damages Class seek all relief available
4 under Nebraska Revised Statutes §§ 59-801, *et. seq.*
5

6 127. Defendants have entered into an unlawful agreement in restraint of trade in
7 violation of the Nevada Revised Statutes Annotated §§ 598A.010, *et. seq.*

8 (a) Defendants' combinations or conspiracies had the following effects: (1)
9 HDD suspension assemblies price competition was restrained, suppressed, and
10 eliminated throughout Nevada; (2) HDD suspension assemblies prices were raised,
11 fixed, maintained and stabilized at artificially high levels throughout Nevada; (3)
12 Plaintiff and members of the Damages Class were deprived of free and open
13 competition; and (4) Plaintiff and members of the Damages Class paid supra-
14 competitive, artificially inflated prices for HDD suspension assemblies.
15

16 (b) During the Class Period, Defendants' illegal conduct substantially affected
17 Nevada commerce.

18 (c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiff
19 and members of the Damages Class have been injured in their business and
20 property and are threatened with further injury.
21

22 (d) By reason of the foregoing, Defendants have entered into agreements in
23 restraint of trade in violation of Nevada Rev. Stat. Ann. §§ 598A.010, *et. seq.*
24 Accordingly, Plaintiff and members of the Damages Class seek all relief available
25 under Nevada Rev. Stat. Ann. §§ 598A.010, *et. seq.*

26 128. Defendants have entered into an unlawful agreement in restraint of trade in
27 violation of the New Hampshire Revised Statutes §§ 356:1, *et. seq.*
28

1 (a) Defendants' combinations or conspiracies had the following effects: (1)
2 HDD suspension assemblies price competition was restrained, suppressed, and
3 eliminated throughout New Hampshire; (2) HDD suspension assemblies prices
4 were raised, fixed, maintained and stabilized at artificially high levels throughout
5 New Hampshire; (3) Plaintiff and members of the Damages Class were deprived of
6 free and open competition; and (4) Plaintiff and members of the Damages Class
7 paid supra-competitive, artificially inflated prices for HDD suspension assemblies.
8

9 (b) During the Class Period, Defendants' illegal conduct substantially affected
10 New Hampshire commerce.

11 (c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiff
12 and members of the Damages Class have been injured in their business and
13 property and are threatened with further injury.
14

15 (d) By reason of the foregoing, Defendants have entered into agreements in
16 restraint of trade in violation of New Hampshire Revised Statutes §§ 356:1, *et. seq.*
17 Accordingly, Plaintiff and members of the Damages Class seek all relief available
18 under New Hampshire Revised Statutes §§ 356:1, *et. seq.*

19 129. Defendants have entered into an unlawful agreement in restraint of trade in
20 violation of the New Mexico Statutes Annotated §§ 57-1-1, *et. seq.*
21

22 (a) Defendants' combinations or conspiracies had the following effects: (1)
23 HDD suspension assemblies price competition was restrained, suppressed, and
24 eliminated throughout New Mexico; (2) HDD suspension assemblies prices were
25 raised, fixed, maintained and stabilized at artificially high levels throughout New
26 Mexico; (3) Plaintiff and members of the Damages Class were deprived of free and
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1 open competition; and (4) Plaintiff and members of the Damages Class paid supra-
2 competitive, artificially inflated prices for HDD suspension assemblies.

3 (b) During the Class Period, Defendants' illegal conduct substantially affected
4 New Mexico commerce.

5 (c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiff
6 and members of the Damages Class have been injured in their business and
7 property and are threatened with further injury.

8 (d) By reason of the foregoing, Defendants have entered into agreements in
9 restraint of trade in violation of New Mexico Stat. Ann. §§ 57-1-1, *et. seq.*
10 Accordingly, Plaintiff and members of the Damages Class seek all relief available
11 under New Mexico Stat. Ann. §§ 57-1-1, *et. seq.*
12

13
14 130. Defendants have entered into an unlawful agreement in restraint of trade in
15 violation of the New York General Business Laws §§ 340, *et. seq.*

16 (a) Defendants' combinations or conspiracies had the following effects: (1)
17 HDD suspension assemblies price competition was restrained, suppressed, and
18 eliminated throughout New York; (2) HDD suspension assemblies prices were
19 raised, fixed, maintained and stabilized at artificially high levels throughout New
20 York; (3) Plaintiff and members of the Damages Class were deprived of free and
21 open competition; and (4) Plaintiff and members of the Damages Class paid supra-
22 competitive, artificially inflated prices for HDD suspension assemblies when they
23 purchased HDDs containing HDD suspension assemblies.
24

25 (b) During the Class Period, Defendants' illegal conduct substantially affected
26 New York commerce.
27
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1 (c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiff
2 and members of the Damages Class have been injured in their business and
3 property and are threatened with further injury.

4 (d) By reason of the foregoing, Defendants have entered into agreements in
5 restraint of trade in violation of the New York Donnelly Act, §§ 340, *et. seq.* The
6 conduct set forth above is a per se violation of the Act. Accordingly, Plaintiff and
7 members of the Damages Class seek all relief available under New York Gen. Bus.
8 Law §§ 340, *et. seq.*

9
10 131. Defendants have entered into an unlawful agreement in restraint of trade in
11 violation of the North Carolina General Statutes §§ 75-1, *et. seq.*

12 (a) Defendants' combinations or conspiracies had the following effects: (1)
13 HDD suspension assemblies price competition was restrained, suppressed, and
14 eliminated throughout North Carolina; (2) HDD suspension assemblies prices were
15 raised, fixed, maintained and stabilized at artificially high levels throughout North
16 Carolina; (3) Plaintiff and members of the Damages Class were deprived of free
17 and open competition; and (4) Plaintiff and members of the Damages Class paid
18 supra-competitive, artificially inflated prices for HDD suspension assemblies.

19 (b) During the Class Period, Defendants' illegal conduct substantially affected
20 North Carolina commerce.

21 (c) As a direct and proximate result of the Defendants' unlawful conduct,
22 Plaintiff and members of the Damages Class have been injured in their business
23 and property and are threatened with further injury.

24 (d) By reason of the foregoing, Defendants have entered into agreements in
25 restraint of trade in violation of North Carolina Gen. Stat. §§ 75-1, *et. seq.*
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1 Accordingly, Plaintiff and members of the Damages Class seek all relief available
2 under North Carolina Gen. Stat. §§ 75-1, *et. seq.*

3 132. Defendants have entered into an unlawful agreement in restraint of trade in
4 violation of the North Dakota Century Code §§ 51-08.1-01, *et. seq.*

5 (a) Defendants' combinations or conspiracies had the following effects: (1)
6 HDD suspension assemblies price competition was restrained, suppressed, and
7 eliminated throughout North Dakota; (2) HDD suspension assemblies prices were
8 raised, fixed, maintained and stabilized at artificially high levels throughout North
9 Dakota; (3) Plaintiff and members of the Damages Class were deprived of free and
10 open competition; and (4) Plaintiff and members of the Damages Class paid supra-
11 competitive, artificially inflated prices for HDD suspension assemblies.
12

13 (b) During the Class Period, Defendants' illegal conduct had a substantial effect
14 on North Dakota commerce.
15

16 (c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiff
17 and members of the Damages Class have been injured in their business and
18 property and are threatened with further injury.

19 (d) By reason of the foregoing, Defendants have entered into agreements in
20 restraint of trade in violation of North Dakota Cent. Code §§ 51-08.1-01, *et. seq.*
21 Accordingly, Plaintiff and members of the Damages Class seek all relief available
22 under North Dakota Cent. Code §§ 51-08.1-01, *et. seq.*
23

24 133. Defendants have entered into an unlawful agreement in restraint of trade in
25 violation of the Oregon Revised Statutes §§ 646.705, *et. seq.*

26 (a) Defendants' combinations or conspiracies had the following effects: (1)
27 HDD suspension assemblies price competition was restrained, suppressed, and
28

1 eliminated throughout Oregon; (2) HDD suspension assemblies prices were raised,
2 fixed, maintained and stabilized at artificially high levels throughout Oregon; (3)
3 Plaintiff and members of the Damages Class were deprived of free and open
4 competition; and (4) Plaintiff and members of the Damages Class paid supra-
5 competitive, artificially inflated prices for HDD suspension assemblies.

6
7 (b) During the Class Period, Defendants' illegal conduct had a substantial effect
8 on Oregon commerce.

9 (c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiff
10 and members of the Damages Class have been injured in their business and
11 property and are threatened with further injury.

12 (d) By reason of the foregoing, Defendants have entered into agreements in
13 restraint of trade in violation of Oregon Revised Statutes §§ 646.705, *et. seq.*
14 Accordingly, Plaintiff and members of the Damages Class seek all relief available
15 under Oregon Revised Statutes §§ 646.705, *et. seq.*
16

17 134. Defendants have entered into an unlawful agreement in restraint of trade in
18 violation of the South Dakota Codified Laws §§ 37-1-3.1, *et. seq.*

19 (a) Defendants' combinations or conspiracies had the following effects: (1)
20 HDD suspension assemblies price competition was restrained, suppressed, and
21 eliminated throughout South Dakota; (2) HDD suspension assemblies prices were
22 raised, fixed, maintained and stabilized at artificially high levels throughout South
23 Dakota; (3) Plaintiff and members of the Damages Class were deprived of free and
24 open competition; and (4) Plaintiff and members of the Damages Class paid supra-
25 competitive, artificially inflated prices for HDD suspension assemblies.
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(b) During the Class Period, Defendants' illegal conduct had a substantial effect on South Dakota commerce.

(c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiff and members of the Damages Class have been injured in their business and property and are threatened with further injury.

(d) By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of South Dakota Codified Laws Ann. §§ 37-1, *et. seq.* Accordingly, Plaintiff and members of the Damages Class seek all relief available under South Dakota Codified Laws Ann. §§ 37-1, *et. seq.*

135. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Tennessee Code Annotated §§ 47-25-101, *et. seq.*

(a) Defendants' combinations or conspiracies had the following effects: (1) HDD suspension assemblies price competition was restrained, suppressed, and eliminated throughout Tennessee; (2) HDD suspension assemblies prices were raised, fixed, maintained and stabilized at artificially high levels throughout Tennessee; (3) Plaintiff and members of the Damages Class were deprived of free and open competition; and (4) Plaintiff and members of the Damages Class paid supra-competitive, artificially inflated prices for HDD suspension assemblies.

(b) During the Class Period, Defendants' illegal conduct had a substantial effect on Tennessee commerce.

(c) As a direct and proximate result of the Defendants' unlawful conduct, Plaintiff and members of the Damages Class have been injured in their business and property and are threatened with further injury.

1 (d) By reason of the foregoing, Defendants have entered into agreements in
2 restraint of trade in violation of Tennessee Code Ann. §§ 47-25-101, *et. seq.*
3 Accordingly, Plaintiff and members of the Damages Class seek all relief available
4 under Tennessee Code Ann. §§ 47-25101, *et. seq.*
5

6 136. Defendants have entered into an unlawful agreement in restraint of trade in
7 violation of the Utah Code Annotated §§ 76-10-3101, *et. seq.*

8 (a) Defendants' combinations or conspiracies had the following effects: (1)
9 HDD suspension assemblies price competition was restrained, suppressed, and
10 eliminated throughout Utah; (2) HDD suspension assemblies prices were raised,
11 fixed, maintained and stabilized at artificially high levels throughout Utah; (3)
12 Plaintiff and members of the Damages Class were deprived of free and open
13 competition; and (4) Plaintiff and members of the Damages Class paid supra-
14 competitive, artificially inflated prices for HDD suspension assemblies.
15

16 (b) During the Class Period, Defendants' illegal conduct had a substantial effect
17 on Utah commerce.

18 (c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiff
19 and members of the Damages Class have been injured in their business and
20 property and are threatened with further injury.
21

22 (d) By reason of the foregoing, Defendants have entered into agreements in
23 restraint of trade in violation of Utah Code Annotated §§ 76-10-3101, *et. seq.*
24 Accordingly, Plaintiff and members of the Damages Class seek all relief available
25 under Utah Code Annotated §§ 76-10-3101, *et. seq.*

26 137. Defendants have entered into an unlawful agreement in restraint of trade in
27 violation of the Vermont Stat. Ann. 9 §§ 2453, *et. seq.*
28

1 (a) Defendants' combinations or conspiracies had the following effects: (1)
2 HDD suspension assemblies price competition was restrained, suppressed, and
3 eliminated throughout Vermont; (2) HDD suspension assemblies prices were
4 raised, fixed, maintained and stabilized at artificially high levels throughout
5 Vermont; (3) Plaintiff and members of the Damages Class were deprived of free
6 and open competition; and (4) Plaintiff and members of the Damages Class paid
7 supra-competitive, artificially inflated prices for HDD suspension assemblies.
8

9 (b) During the Class Period, Defendants' illegal conduct had a substantial effect
10 on Vermont commerce.

11 (c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiff
12 and members of the Damages Class have been injured in their business and
13 property and are threatened with further injury.
14

15 (d) By reason of the foregoing, Defendants have entered into agreements in
16 restraint of trade in violation of Vermont Stat. Ann. 9 §§ 2453, *et. seq.*
17 Accordingly, Plaintiff and members of the Damages Class seek all relief available
18 under Vermont Stat. Ann. 9 §§ 2453, *et. seq.*

19 138. Defendants have entered into an unlawful agreement in restraint of trade in
20 violation of the West Virginia Code §§ 47-18-1, *et. seq.*
21

22 (a) Defendants' combinations or conspiracies had the following effects: (1)
23 HDD suspension assemblies price competition was restrained, suppressed, and
24 eliminated throughout West Virginia; (2) HDD suspension assemblies prices were
25 raised, fixed, maintained and stabilized at artificially high levels throughout West
26 Virginia; (3) Plaintiff and members of the Damages Class were deprived of free
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1 and open competition; and (4) Plaintiff and members of the Damages Class paid
2 supra-competitive, artificially inflated prices for HDD suspension assemblies.

3 (b) During the Class Period, Defendants' illegal conduct had a substantial effect
4 on West Virginia commerce.

5 (c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiff
6 and members of the Damages Class have been injured in their business and
7 property and are threatened with further injury.

8 (d) By reason of the foregoing, Defendants have entered into agreements in
9 restraint of trade in violation of West Virginia Code §§ 47-18-1, *et. seq.*
10 Accordingly, Plaintiff and members of the Damages Class seek all relief available
11 under West Virginia Code §§ 47-18-1, *et. seq.*
12

13
14 139. Defendants have entered into an unlawful agreement in restraint of trade in
15 violation of the Wisconsin Statutes §§ 133.01, *et. seq.*

16 (a) Defendants' combinations or conspiracies had the following effects: (1)
17 HDD suspension assemblies price competition was restrained, suppressed, and
18 eliminated throughout Wisconsin; (2) HDD suspension assemblies prices were
19 raised, fixed, maintained and stabilized at artificially high levels throughout
20 Wisconsin; (3) Plaintiff and members of the Damages Class were deprived of free
21 and open competition; and (4) Plaintiff and members of the Damages Class paid
22 supra-competitive, artificially inflated prices for HDD suspension assemblies.
23

24 (b) During the Class Period, Defendants' illegal conduct had a substantial effect
25 on Wisconsin commerce.
26
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28

1 (c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiff
2 and members of the Damages Class have been injured in their business and
3 property and are threatened with further injury.

4 (d) By reason of the foregoing, Defendants have entered into agreements in
5 restraint of trade in violation of Wisconsin Stat. §§ 133.01, *et. seq.* Accordingly,
6 Plaintiff and members of the Damages Class seek all relief available under
7 Wisconsin Stat. §§ 133.01, *et. seq.*
8

9 140. Plaintiff and members of the Damages Class in each of the above states have been
10 injured in their business and property by reason of Defendants' unlawful combination, contract,
11 conspiracy and agreement. Plaintiff and members of the Damages Class have paid more for HDD
12 suspension assemblies than they otherwise would have paid in the absence of Defendants'
13 unlawful conduct. This injury is of the type the antitrust laws of the above states were designed to
14 prevent and flows from that which makes Defendants' conduct unlawful.
15

16 141. In addition, Defendants have profited significantly from the aforesaid conspiracy.
17 Defendants' profits derived from their anticompetitive conduct come at the expense and detriment
18 of the Plaintiff and the members of the Damages Class.

19 142. Accordingly, Plaintiff and the members of the Damages Class in each of the above
20 jurisdictions seek damages (including statutory damages where applicable), to be trebled or
21 otherwise increased as permitted by a particular jurisdiction's antitrust law, and costs of suit,
22 including reasonable attorneys' fees, to the extent permitted by the above state laws.
23

24 **COUNT III**
25 **Violation of State Consumer Protection Statutes**
26 **(on behalf of Plaintiff and the Damages Class)**

27 143. Plaintiff incorporates by reference the allegations in the preceding paragraphs.
28

1 144. Defendants engaged in unfair competition or unfair, unconscionable, deceptive or
2 fraudulent acts or practices in violation of the state consumer protection and unfair competition
3 statutes listed below.

4 145. Defendants have knowingly entered into an unlawful agreement in restraint of trade
5 in violation of the Arkansas Code Annotated, § 4-88-101, *et. seq.*
6

7 (a) Defendants knowingly agreed to, and did in fact, act in restraint
8 of trade or commerce by affecting, fixing, controlling, and/or maintaining at non-
9 competitive and artificially inflated levels, the prices at which HDD suspension
10 assemblies were sold, distributed, or obtained in Arkansas and took efforts to
11 conceal their agreements from Plaintiff and members of the Damages Class.

12 (b) The aforementioned conduct on the part of the Defendants constituted
13 “unconscionable” and “deceptive” acts or practices in violation of Arkansas Code
14 Annotated, § 4-88-107(a)(10).
15

16 (c) Defendants’ unlawful conduct had the following effects: (1) HDD
17 suspension assemblies price competition was restrained, suppressed, and eliminated
18 throughout Arkansas; (2) HDD suspension assemblies prices were raised, fixed,
19 maintained, and stabilized at artificially high levels throughout Arkansas; (3)
20 Plaintiff and the members of the Damages Class were deprived of free and open
21 competition; and (4) Plaintiff and the members of the Damages Class paid supra-
22 competitive, artificially inflated prices for HDD suspension assemblies.
23

24 (d) During the Class Period, Defendants’ illegal conduct substantially affected
25 Arkansas commerce and consumers.
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1 (e) As a direct and proximate result of the unlawful conduct of
2 Defendants, Plaintiff and the members of the Damages Class have been injured in
3 their business and property and are threatened with further injury.

4 (f) Defendants have engaged in unfair competition or unfair or deceptive acts
5 or practices in violation of Arkansas Code Annotated, § 4-88-107(a)(10) and,
6 accordingly, Plaintiff and the members of the Damages Class seek all relief
7 available under that statute.
8

9 146. Defendants have engaged in unfair competition or unfair, unconscionable,
10 deceptive or fraudulent acts or practices in violation of California Business and Professions Code
11 § 17200, *et. seq.*:

12 (a) During the Class Period, Defendants marketed, sold, or distributed HDD
13 suspension assemblies in California, and committed and continue to commit acts of
14 unfair competition, as defined by Sections 17200, *et. seq.* of the California
15 Business and Professions Code, by engaging in the acts and practices specified
16 above.
17

18 (b) This claim is instituted pursuant to Sections 17203 and 17204 of the
19 California Business and Professions Code, to obtain restitution from these
20 Defendants for acts, as alleged herein, that violated Section 17200 of the California
21 Business and Professions Code, commonly known as the Unfair Competition Law.
22

23 (c) Defendants' conduct as alleged herein violates Section 17200. The acts,
24 omissions, misrepresentations, practices and non-disclosures of Defendants, as
25 alleged herein, constituted a common, continuous, and continuing course of
26 conduct of unfair competition by means of unfair, unlawful, and/or fraudulent
27 business acts or practices within the meaning of California Business and
28

1 Professions Code, Section 17200, *et. seq.*, including, but not limited to, the
2 following: (1) the violations of Section 1 of the Sherman Act, as set forth above;
3 (2) the violations of Section 16720, *et. seq.*, of the California Business and
4 Professions Code, set forth above;

5 (d) Defendants' acts, omissions, misrepresentations, practices, and non-
6 disclosures, as described above, whether or not in violation of Section 16720, *et.*
7 *seq.*, of the California Business and Professions Code, and whether or not concerted
8 or independent acts, are otherwise unfair, unconscionable, unlawful or fraudulent;

9 (e) Defendants' acts or practices are unfair to consumers of HDD suspension
10 assemblies (or products containing them) in the State of California within the
11 meaning of Section 17200, California Business and Professions Code;

12 (f) Defendants' acts and practices are fraudulent or deceptive within the
13 meaning of Section 17200 of the California Business and Professions Code;

14 (g) Plaintiff and members of the Damages Class are entitled to full restitution
15 and/or disgorgement of all revenues, earnings, profits, compensation, and benefits
16 that may have been obtained by Defendants as a result of such business acts or
17 practices;

18 (h) The illegal conduct alleged herein is continuing and there is no indication
19 that Defendants will not continue such activity into the future;

20 (i) The unlawful and unfair business practices of Defendants, each of them,
21 have caused and continue to cause Plaintiff and the members of the Damages Class
22 to pay supra-competitive and artificially-inflated prices for HDD suspension
23 assemblies (or products containing them). Plaintiff and the members of the
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1 Damages Class suffered injury in fact and lost money or property as a result of such
2 unfair competition.

3 (j) The conduct of Defendants as alleged in this Complaint violates Section
4 17200 of the California Business and Professions Code.

5 (k) As alleged in this Complaint, Defendants and their coconspirators have
6 been unjustly enriched as a result of their wrongful conduct and by Defendants'
7 unfair competition. Plaintiff and the members of the Damages Class are
8 accordingly entitled to equitable relief including restitution and/or disgorgement of
9 all revenues, earnings, profits, compensation, and benefits that may have been
10 obtained by Defendants as a result of such business practices, pursuant to the
11 California Business and Professions Code, Sections 17203 and 17204.
12

13
14 147. Defendants have engaged in unfair competition or unfair, unconscionable, or
15 deceptive acts or practices in violation of District of Columbia Code § 28-3901, *et. seq.*

16 (a) Defendants agreed to, and did in fact, act in restraint of trade or commerce
17 by affecting, fixing, controlling and/or maintaining, at artificial and/or non-
18 competitive levels, the prices at which HDD suspension assemblies were sold,
19 distributed or obtained in the District of Columbia.

20 (b) The foregoing conduct constitutes "unlawful trade practices," within the
21 meaning of D.C. Code § 28-3904. Plaintiff were not aware of Defendants' price-
22 fixing conspiracy and were therefore unaware that they were being unfairly and
23 illegally overcharged. There was a gross disparity of bargaining power between the
24 parties with respect to the price charged by Defendants for HDD suspension
25 assemblies. Defendants had the sole power to set that price and Plaintiff had no
26 power to negotiate a lower price. Moreover, Plaintiff lacked any meaningful choice
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1 in purchasing HDD suspension assemblies because they were unaware of the
2 unlawful overcharge and there was no alternative source of supply through which
3 Plaintiff could avoid the overcharges. Defendants' conduct with regard to sales of
4 HDD suspension assemblies, including their illegal conspiracy to secretly fix the
5 price of HDD suspension assemblies at supra-competitive levels and overcharge
6 consumers, was substantively unconscionable because it was one-sided and
7 unfairly benefited Defendants at the expense of Plaintiff and the public. Defendants
8 took grossly unfair advantage of Plaintiff. The suppression of competition that has
9 resulted from Defendants' conspiracy has ultimately resulted in unconscionably
10 higher prices for consumers so that there was a gross disparity between the price
11 paid and the value received for HDD suspension assemblies.
12

13 (c) Defendants' unlawful conduct had the following effects: (1) HDD
14 suspension assemblies price competition was restrained, suppressed, and eliminated
15 throughout the District of Columbia; (2) HDD suspension assemblies prices were
16 raised, fixed, maintained, and stabilized at artificially high levels throughout the
17 District of Columbia; (3) Plaintiff and the Damages Class were deprived of free and
18 open competition; and (4) Plaintiff and the Damages Class paid supra-competitive,
19 artificially inflated prices for HDD suspension assemblies.
20

21 (d) As a direct and proximate result of Defendants' unlawful conduct, Plaintiff
22 and members of the Damages Class have been injured and are threatened with
23 further injury. Defendants have engaged in unfair competition or unfair or
24 deceptive acts or practices in violation of District of Columbia Code § 28-3901, *et*
25 *seq.*, and, accordingly, Plaintiff and members of the Damages Class seek all relief
26 available under that statute.
27
28

1 148. Defendants have engaged in unfair competition or unfair, unconscionable, or
2 deceptive acts or practices in violation of the Florida Deceptive and Unfair Trade Practices Act,
3 Fla. Stat. §§ 501.201, *et. seq.*

4 (a) Defendants' unlawful conduct had the following effects: (1) HDD
5 suspension assemblies price competition was restrained, suppressed, and eliminated
6 throughout Florida; (2) HDD suspension assemblies prices were raised, fixed,
7 maintained, and stabilized at artificially high levels throughout Florida; (3) Plaintiff
8 and members of the Damages Class were deprived of free and open competition;
9 and (4) Plaintiff and members of the Damages Class paid supra-competitive,
10 artificially inflated prices for HDD suspension assemblies.

11
12 (b) During the Class Period, Defendants' illegal conduct substantially affected
13 Florida commerce and consumers.

14
15 (c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiff
16 and members of the Damages Class have been injured and are threatened with
17 further injury.

18 (d) Defendants have engaged in unfair competition or unfair or deceptive acts
19 or practices in violation of Florida Stat. § 501.201, *et. seq.*, and, accordingly,
20 Plaintiff and members of the Damages Class seek all relief available under that
21 statute.
22

23 149. Defendants have engaged in unfair competition or unfair, unconscionable, or
24 deceptive acts or practices in violation of the Hawaii Revised Statutes Annotated §§ 480-1, *et. seq.*

25 (a) Defendants' unlawful conduct had the following effects: (1) HDD
26 suspension assemblies price competition was restrained, suppressed, and eliminated
27 throughout Hawaii; (2) HDD suspension assemblies prices were raised, fixed,
28

1 maintained, and stabilized at artificially high levels throughout Hawaii; (3) Plaintiff
2 and members of the Damages Class were deprived of free and open competition;
3 and (4) Plaintiff and members of the Damages Class paid supra-competitive,
4 artificially inflated prices for HDD suspension assemblies.

5 (b) During the Class Period, Defendants' illegal conduct substantially affected
6 Hawaii commerce and consumers.

7 (c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiff
8 and members of the Damages Class have been injured and are threatened with
9 further injury.

10 (d) Defendants have engaged in unfair competition or unfair or deceptive acts
11 or practices in violation of Hawaii Rev. Stat. § 480, *et. seq.*, and, accordingly,
12 Plaintiff and members of the Damages Class seek all relief available under that
13 statute.
14

15
16 150. Defendants have engaged in unfair competition or unfair, unconscionable, or
17 deceptive acts or practices in violation of Mass. G.L. c. 93A, §2.

18 (a) Defendants were engaged in trade or commerce as defined by G.L. c. 93A.

19 (b) Defendants agreed to, and did in fact, act in restraint of trade or commerce
20 in a market which includes Massachusetts, by affecting, fixing, controlling and/or
21 maintaining at artificial and non-competitive levels, the prices at which HDD
22 suspension assemblies were sold, distributed, or obtained in Massachusetts and
23 took efforts to conceal their agreements from Plaintiff and members of the
24 Damages Class.

25 (c) Defendants' unlawful conduct had the following effects: (1) HDD
26 suspension assemblies price competition was restrained, suppressed, and eliminated
27
28

1 throughout Massachusetts; (2) HDD suspension assemblies prices were raised,
2 fixed, maintained, and stabilized at artificially high levels throughout
3 Massachusetts; (3) Plaintiff and members of the Damages Class were deprived of
4 free and open competition; and (4) Plaintiff and members of the Damages Class
5 paid supra-competitive, artificially inflated prices for HDD suspension assemblies.
6

7 (d) As a direct and proximate result of Defendants' unlawful conduct, Plaintiff
8 and members of the Damages Class were injured and are threatened with further
9 injury.

10 (e) Certain of the Defendants have or will be served with a demand
11 letter in accordance with G.L. c. 93A, § 9, or, upon information and belief, such
12 service of a demand letter was unnecessary due to the defendant not maintaining a
13 place of business within the Commonwealth of Massachusetts or not keeping assets
14 within the Commonwealth.
15

16 (f) By reason of the foregoing, Defendants engaged in unfair competition and
17 unfair or deceptive acts or practices, in violation of G.L. c. 93A, §2. Defendants'
18 and their co-conspirators' violations of Chapter 93A were knowing or willful,
19 entitling Plaintiff and members of the Damages Class to multiple damages.
20

21 151. Defendants have engaged in unfair competition or unfair, unconscionable, or
22 deceptive acts or practices in violation of the Missouri Merchandising Practices Act, Mo. Rev.
23 Stat. § 407.010, *et. seq.*

24 (a) Plaintiff and the Damages Class purchased HDD suspension assemblies for
25 personal, family, or household purposes.
26
27
28

1 (b) Defendants engaged in the conduct described herein in connection with the
2 sale of HDD suspension assemblies in trade or commerce in a market that includes
3 Missouri.

4 (c) Defendants and their co-conspirators agreed to, and did in fact
5 affect, fix, control, and/or maintain, at artificial and non-competitive levels, the
6 prices at which HDD suspension assemblies were sold, distributed, or obtained in
7 Missouri, which conduct constituted unfair practices in that it was unlawful under
8 federal and state law, violated public policy, was unethical, oppressive and
9 unscrupulous, and caused substantial injury to Plaintiff and members of the
10 Damages Class.
11

12 (d) Defendants concealed, suppressed, and omitted to disclose material facts to
13 Plaintiff and members of the Damages Class concerning Defendants' unlawful
14 activities and artificially inflated prices for HDD suspension assemblies. The
15 concealed, suppressed, and omitted facts would have been important to Plaintiff
16 and members of the Damages Class as they related to the cost of HDD suspension
17 assemblies they purchased.
18

19 (e) Defendants misrepresented the real cause of price increases and/or the
20 absence of price reductions in HDD suspension assemblies by making public
21 statements that were not in accord with the facts.
22

23 (f) Defendants' statements and conduct concerning the price of HDD
24 suspension assemblies were deceptive as they had the tendency or capacity to
25 mislead Plaintiff and members of the Damages Class to believe that they were
26 purchasing HDD suspension assemblies at prices established by a free and fair
27 market.
28

1 (g) Defendants' unlawful conduct had the following effects: (1) HDD
2 suspension assemblies price competition was restrained, suppressed, and eliminated
3 throughout Missouri; (2) HDD suspension assemblies prices were raised, fixed,
4 maintained, and stabilized at artificially high levels throughout Missouri; (3)
5 Plaintiff and members of the Damages Class were deprived of free and open
6 competition; and (4) Plaintiff and members of the Damages Class paid supra-
7 competitive, artificially inflated prices for HDD suspension assemblies.
8

9 (h) The foregoing acts and practices constituted unlawful practices
10 in violation of the Missouri Merchandising Practices Act.

11 (i) As a direct and proximate result of the above-described unlawful practices,
12 Plaintiff and members of the Damages Class suffered ascertainable loss of money
13 or property.
14

15 (j) Accordingly, Plaintiff and members of the Damages Class seek all relief
16 available under Missouri's Merchandising Practices Act, specifically Mo. Rev.
17 Stat. § 407.020, which prohibits "the act, use or employment by any person of any
18 deception, fraud, false pretense, false promise, misrepresentation, unfair practice or
19 the concealment, suppression, or omission of any material fact in connection with
20 the sale or advertisement of any merchandise in trade or commerce....," as further
21 interpreted by the Missouri Code of State Regulations, 15 CSR 60-7.010, *et. seq.*,
22 15 CSR 60-8.010, *et. seq.*, and 15 CSR 60-9.010, *et. seq.*, and Mo. Rev. Stat. §
23 407.025, which provides for the relief sought in this count.
24

25 152. Defendants have engaged in unfair competition or unfair, unconscionable, or
26 deceptive acts or practices in violation of the Montana Consumer Protection Act of 1973, Mont.
27 Code, §§ 30-14-101, *et. seq.*
28

1 (a) Defendants' unlawful conduct had the following effects: (1) HDD
2 suspension assemblies price competition was restrained, suppressed, and eliminated
3 throughout Montana; (2) HDD suspension assemblies prices were raised, fixed,
4 maintained, and stabilized at artificially high levels throughout Montana; (3)
5 Plaintiff and members of the Damages Class were deprived of free and open
6 competition; and (4) Plaintiff and members of the Damages Class paid supra-
7 competitive, artificially inflated prices for HDD suspension assemblies.
8

9 (b) During the Class Period, Defendants' illegal conduct substantially affected
10 Montana commerce and consumers.

11 (c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiff
12 and members of the Damages Class have been injured and are threatened with
13 further injury.
14

15 (d) Defendants have engaged in unfair competition or unfair or deceptive acts
16 or practices in violation of Mont. Code, §§ 30-14-101, *et. seq.*, and, accordingly,
17 Plaintiff and members of the Damages Class seek all relief available under that
18 statute.

19 153. Defendants have engaged in unfair competition or unfair, unconscionable, or
20 deceptive acts or practices in violation of the New Mexico Stat. § 57-12-1, *et. seq.*
21

22 (a) Defendants and their co-conspirators agreed to, and did in fact,
23 act in restraint of trade or commerce by affecting, fixing, controlling and/or
24 maintaining at non-competitive and artificially inflated levels, the prices at which
25 HDD suspension assemblies were sold, distributed or obtained in New Mexico and
26 took efforts to conceal their agreements from Plaintiff and members of the
27 Damages Class.
28

1 (b) The aforementioned conduct on the part of Defendants constituted
2 “unconscionable trade practices,” in violation of N.M.S.A. Stat. § 57-12-3, in that
3 such conduct, inter alia, resulted in a gross disparity between the value received by
4 Plaintiff and the members of the Damages Class and the prices paid by them for
5 HDD suspension assemblies as set forth in N.M.S.A., § 57-12-2E. Plaintiff were
6 not aware of Defendants’ price-fixing conspiracy and were therefore unaware that
7 they were being unfairly and illegally overcharged. There was a gross disparity of
8 bargaining power between the parties with respect to the price charged by
9 Defendants for HDD suspension assemblies. Defendants had the sole power to set
10 that price and Plaintiff had no power to negotiate a lower price. Moreover, Plaintiff
11 lacked any meaningful choice in purchasing HDD suspension assemblies because
12 they were unaware of the unlawful overcharge and there was no alternative source
13 of supply through which Plaintiff could avoid the overcharges. Defendants’
14 conduct with regard to sales of HDD suspension assemblies, including their illegal
15 conspiracy to secretly fix the price of HDD suspension assemblies at supra-
16 competitive levels and overcharge consumers, was substantively unconscionable
17 because it was one-sided and unfairly benefited Defendants at the expense of
18 Plaintiff and the public. Defendants took grossly unfair advantage of Plaintiff. The
19 suppression of competition that has resulted from Defendants’ conspiracy has
20 ultimately resulted in unconscionably higher prices for consumers so that there was
21 a gross disparity between the price paid and the value received for HDD suspension
22 assemblies.
23
24
25

26 (c) Defendants’ unlawful conduct had the following effects: (1) HDD
27 suspension assemblies price competition was restrained, suppressed, and eliminated
28

1 throughout New Mexico; (2) HDD suspension assemblies prices were raised, fixed,
2 maintained, and stabilized at artificially high levels throughout New Mexico; (3)
3 Plaintiff and the members of the Damages Class were deprived of free and open
4 competition; and (4) Plaintiff and the members of the Damages Class paid supra-
5 competitive, artificially inflated prices for HDD suspension assemblies.

6
7 (d) During the Class Period, Defendants' illegal conduct substantially affected
8 New Mexico commerce and consumers.

9 (e) As a direct and proximate result of the unlawful conduct of Defendants,
10 Plaintiff and the members of the Damages Class have been injured and are
11 threatened with further injury.

12 (f) Defendants have engaged in unfair competition or unfair or deceptive acts
13 or practices in violation of New Mexico Stat. § 57-12-1, *et. seq.*, and, accordingly,
14 Plaintiff and the members of the Damages Class seek all relief available under that
15 statute.
16

17 154. Defendants have engaged in unfair competition or unfair, unconscionable, or
18 deceptive acts or practices in violation of N.Y. Gen. Bus. Law § 349, *et. seq.*

19 (a) Defendants agreed to, and did in fact, act in restraint of trade or commerce
20 by affecting, fixing, controlling and/or maintaining, at artificial and non-
21 competitive levels, the prices at which HDD suspension assemblies were sold,
22 distributed or obtained in New York and took efforts to conceal their agreements
23 from Plaintiff and members of the Damages Class.
24

25 (b) Defendants and their co-conspirators made public statements about the
26 prices of HDD suspension assemblies and products containing HDD suspension
27 assemblies that Defendants knew would be seen by New York consumers; such
28

1 statements either omitted material information that rendered the statements that
2 they made materially misleading or affirmatively misrepresented the real cause of
3 price increases for HDD suspension assemblies and products containing HDD
4 suspension assemblies; and Defendants alone possessed material information that
5 was relevant to consumers, but failed to provide the information.

6
7 (c) Because of Defendants' unlawful trade practices in the State of New York,
8 New York consumer class members who indirectly purchased HDD suspension
9 assemblies were misled to believe that they were paying a fair price for HDD
10 suspension assemblies or the price increases for HDD suspension assemblies were
11 for valid business reasons; and similarly situated consumers were potentially
12 affected by Defendants' conspiracy.

13
14 (d) Defendants knew that their unlawful trade practices with respect to pricing
15 HDD suspension assemblies would have an impact on New York consumers and
16 not just the Defendants' direct customers.

17
18 (e) Defendants knew that their unlawful trade practices with respect to pricing
19 HDD suspension assemblies would have a broad impact, causing consumer class
20 members who indirectly purchased HDD suspension assemblies to be injured by
21 paying more for HDD suspension assemblies than they would have paid in the
22 absence of Defendants' unlawful trade acts and practices.

23
24 (f) The conduct of the Defendants described herein constitutes consumer-
25 oriented deceptive acts or practices within the meaning of N.Y. Gen. Bus. Law §
26 349, which resulted in consumer injury and broad adverse impact on the public at
27 large, and harmed the public interest of New York State in an honest marketplace
28 in which economic activity is conducted in a competitive manner.

1 (g) Defendants' unlawful conduct had the following effects: (1) HDD
2 suspension assemblies price competition was restrained, suppressed, and eliminated
3 throughout New York; (2) HDD suspension assemblies prices were raised, fixed,
4 maintained, and stabilized at artificially high levels throughout New York; (3)
5 Plaintiff and members of the Damages Class were deprived of free and open
6 competition; and (4) Plaintiff and members of the Damages Class paid supra-
7 competitive, artificially inflated prices for HDD suspension assemblies.
8

9 (h) During the Class Period, Defendants' marketed, sold, or distributed HDD
10 suspension assemblies in New York, and Defendants' illegal conduct substantially
11 affected New York commerce and consumers.
12

13 (i) During the Class Period, each of the Defendants named herein, directly, or
14 indirectly and through affiliates they dominated and controlled, manufactured, sold
15 and/or distributed HDD suspension assemblies in New York.

16 (j) Plaintiff and members of the Damages Class seek all relief available
17 pursuant to N.Y. Gen. Bus. Law § 349 (h).
18

19 155. Defendants have engaged in unfair competition or unfair, unconscionable, or
20 deceptive acts or practices in violation of North Carolina Gen. Stat. § 75-1.1, *et. seq.*

21 (a) Defendants agreed to, and did in fact, act in restraint of trade or commerce
22 by affecting, fixing, controlling and/or maintaining, at artificial and non-
23 competitive levels, the prices at which HDD suspension assemblies were sold,
24 distributed or obtained in North Carolina and took efforts to conceal their
25 agreements from Plaintiff and members of the Damages Class.

26 (b) Defendants' price-fixing conspiracy could not have succeeded absent
27 deceptive conduct by Defendants to cover up their illegal acts. Secrecy was integral
28

1 to the formation, implementation and maintenance of Defendants' price-fixing
2 conspiracy. Defendants committed inherently deceptive and self-concealing
3 actions, of which Plaintiff could not possibly have been aware. Defendants and
4 their coconspirators publicly provided pre-textual and false justifications regarding
5 their price increases. Defendants' public statements concerning the price of HDD
6 suspension assemblies created the illusion of competitive pricing controlled by
7 market forces rather than supra-competitive pricing driven by Defendants' illegal
8 conspiracy. Moreover, Defendants deceptively concealed their unlawful activities
9 by mutually agreeing not to divulge the existence of the conspiracy to outsiders,
10 conducting meetings and conversations in secret, confining the plan to a small
11 group of higher-level officials at each company and avoiding the creation of
12 documents which would reveal the antitrust violations.
13

14
15 (c) The conduct of the Defendants described herein constitutes consumer-
16 oriented deceptive acts or practices within the meaning of North Carolina law,
17 which resulted in consumer injury and broad adverse impact on the public at large,
18 and harmed the public interest of North Carolina consumers in an honest
19 marketplace in which economic activity is conducted in a competitive manner.

20 (d) Defendants' unlawful conduct had the following effects: (1) HDD
21 suspension assemblies price competition was restrained, suppressed, and eliminated
22 throughout North Carolina; (2) HDD suspension assemblies prices were raised,
23 fixed, maintained, and stabilized at artificially high levels throughout North
24 Carolina; (3) Plaintiff and members of the Damages Class were deprived of free
25 and open competition; and (4) Plaintiff and members of the Damages Class paid
26 supra-competitive, artificially inflated prices for HDD suspension assemblies.
27
28

1 (e) During the Class Period, Defendants' marketed, sold, or distributed HDD
2 suspension assemblies in North Carolina, and Defendants' illegal conduct
3 substantially affected North Carolina commerce and consumers.

4 (f) During the Class Period, each of the Defendants named herein, directly, or
5 indirectly and through affiliates they dominated and controlled, manufactured, sold
6 and/or distributed HDD suspension assemblies in North Carolina.

7 (g) Plaintiff and members of the Damages Class seek actual damages for their
8 injuries caused by these violations in an amount to be determined at trial and are
9 threatened with further injury. Defendants have engaged in unfair competition or
10 unfair or deceptive acts or practices in violation of North Carolina Gen. Stat. § 75-
11 1.1, *et. seq.*, and, accordingly, Plaintiff and members of the Damages Class seek all
12 relief available under that statute.
13

14
15 156. Defendants have engaged in unfair competition or unfair, unconscionable, or
16 deceptive acts or practices in violation of the Rhode Island Unfair Trade Practice and Consumer
17 Protection Act, R.I. Gen. Laws §§ 6-13.1-1, *et. seq.*

18 (a) Members of this Damages Class purchased HDD suspension assemblies for
19 personal, family, or household purposes.

20 (b) Defendants agreed to, and did in fact, act in restraint of trade or commerce
21 in a market that includes Rhode Island, by affecting, fixing, controlling, and/or
22 maintaining, at artificial and non-competitive levels, the prices at which HDD
23 suspension assemblies were sold, distributed, or obtained in Rhode Island.

24 (c) Defendants deliberately failed to disclose material facts to Plaintiff and
25 members of the Damages Class concerning Defendants' unlawful activities and
26 artificially inflated prices for HDD suspension assemblies. Defendants owed a duty
27
28

1 to disclose such facts, and considering the relative lack of sophistication of the
2 average, non-business consumer, Defendants breached that duty by their silence.
3 Defendants misrepresented to all consumers during the Class Period that
4 Defendants' HDD suspension assemblies prices were competitive and fair.

5 (d) Defendants' unlawful conduct had the following effects: (1) HDD
6 suspension assemblies price competition was restrained, suppressed, and eliminated
7 throughout Rhode Island; (2) HDD suspension assemblies prices were raised, fixed,
8 maintained, and stabilized at artificially high levels throughout Rhode Island; (3)
9 Plaintiff and members of the Damages Class were deprived of free and open
10 competition; and (4) Plaintiff and members of the Damages Class paid supra-
11 competitive, artificially inflated prices for HDD suspension assemblies.
12

13 (e) As a direct and proximate result of the Defendants' violations of law,
14 Plaintiff and members of the Damages Class suffered an ascertainable loss of
15 money or property as a result of Defendants' use or employment of unconscionable
16 and deceptive commercial practices as set forth above. That loss was caused by
17 Defendants' willful and deceptive conduct, as described herein.
18

19 (f) Defendants' deception, including their affirmative misrepresentations and
20 omissions concerning the price of HDD suspension assemblies, likely misled all
21 consumers acting reasonably under the circumstances to believe that they were
22 purchasing HDD suspension assemblies at prices set by a free and fair market.
23 Defendants' affirmative misrepresentations and omissions constitute information
24 important to Plaintiff and members of the Damages Class as they related to the cost
25 of HDD suspension assemblies they purchased.
26
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1 (g) Defendants have engaged in unfair competition or unfair or deceptive acts
2 or practices in violation of Rhode Island Gen. Laws. § 613.1-1, *et. seq.*, and,
3 accordingly, Plaintiff and members of the Damages Class seek all relief available
4 under that statute.

5 157. Defendants have engaged in unfair competition or unfair, unconscionable, or
6 deceptive acts or practices in violation of South Carolina Unfair Trade Practices Act, S.C. Code
7 Ann. §§ 39-5-10, *et. seq.*

8 (a) Defendants' combinations or conspiracies had the following effects: (1)
9 HDD suspension assemblies price competition was restrained, suppressed, and
10 eliminated throughout South Carolina; (2) HDD suspension assemblies prices were
11 raised, fixed, maintained, and stabilized at artificially high levels throughout South
12 Carolina; (3) Plaintiff and members of the Damages Class were deprived of free
13 and open competition; and (4) Plaintiff and members of the Damages Class paid
14 supra-competitive, artificially inflated prices for HDD suspension assemblies.
15

16 (b) During the Class Period, Defendants' illegal conduct had a substantial effect
17 on South Carolina commerce.

18 (c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiff
19 and members of the Damages Class have been injured in their business and
20 property and are threatened with further injury.

21 (d) Defendants have engaged in unfair competition or unfair or deceptive acts
22 or practices in violation of S.C. Code Ann. §§ 39-5-10, *et. seq.*, and, accordingly,
23 Plaintiff and the members of the Damages Class seek all relief available under that
24 statute.
25
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1 158. Defendants have engaged in unfair competition or unfair,
2 unconscionable, or deceptive acts or practices in violation of 9 Vermont § 2451, *et. seq.*:

3 (a) Defendants and their co-conspirators agreed to, and did in fact,
4 act in restraint of trade or commerce in a market that includes Vermont by
5 affecting, fixing, controlling, and/or maintaining, at artificial and non-competitive
6 levels, the prices at which HDD suspension assemblies were sold, distributed, or
7 obtained in Vermont.

8
9 (b) Defendants deliberately failed to disclose material facts to Plaintiff and
10 members of the Damages Class concerning their unlawful activities and artificially
11 inflated prices for HDD suspension assemblies. Defendants owed a duty to disclose
12 such facts, and considering the relative lack of sophistication of the average, non-
13 business purchaser, Defendants breached that duty by their silence. Defendants
14 misrepresented to all purchasers during the Class Period that their HDD suspension
15 assemblies prices were competitive and fair.

16
17 (c) Defendants' unlawful conduct had the following effects: (1) HDD
18 suspension assemblies price competition was restrained, suppressed, and eliminated
19 throughout Vermont; (2) HDD suspension assemblies prices were raised, fixed,
20 maintained, and stabilized at artificially high levels throughout Vermont; (3)
21 Plaintiff and members of the Damages Class were deprived of free and open
22 competition; and (4) Plaintiff and members of the Damages Class paid supra-
23 competitive, artificially inflated prices for HDD suspension assemblies.

24
25 (d) As a direct and proximate result of Defendants' violations of law,
26 Plaintiff and members of the Damages Class suffered an ascertainable loss of
27 money or property as a result of Defendants' use or employment of unconscionable
28

1 and deceptive commercial practices as set forth above. That loss was caused by the
2 Defendants' willful and deceptive conduct, as described herein.

3 (e) Defendants' deception, including their omissions concerning the
4 price of HDD suspension assemblies, likely misled all purchasers acting reasonably
5 under the circumstances to believe that they were purchasing HDD suspension
6 assemblies at prices born by a free and fair market. Defendants' misleading conduct
7 and unconscionable activities constitutes unfair competition or unfair or deceptive
8 acts or practices in violation of 9 Vermont § 2451, *et. seq.*, and, accordingly,
9 Plaintiff and members of the Damages Class seek all relief available under that
10 statute.
11

12 **COUNT IV**
13 **Unjust Enrichment**
14 **(on behalf of Plaintiff and the Damages Class)**

15 159. Plaintiff incorporates by reference the allegations in the preceding paragraphs.

16 160. Plaintiff brings this claim under the laws of all states listed in Count II and Count
17 III, *supra*.

18 161. As a result of their unlawful conduct described above, Defendants have and will
19 continue to be unjustly enriched. Defendants have been unjustly enriched by the receipt of, at a
20 minimum, unlawfully inflated prices and unlawful profits on sales of HDD suspension assemblies.

21 162. Defendants have benefited from their unlawful acts and it would be inequitable for
22 Defendants to be permitted to retain any of the ill-gotten gains resulting from the overpayments
23 made by Plaintiff of the members of the Damages Class for HDD suspension assemblies. Plaintiff
24 and the members of the Damages Class are entitled to the amount of Defendants' ill-gotten gains
25 resulting from their unlawful, unjust, and inequitable conduct.
26
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163. Plaintiff and the members of the Damages Class are entitled to the establishment of a constructive trust consisting of all ill-gotten gains from which Plaintiff and the members of the Damages Class may make claims on a pro rata basis.

164. Pursuit of any remedies against the firms from which Plaintiff and the members of the Damages Class purchased HDDs containing HDD suspension assemblies subject to Defendants' conspiracy would have been futile.

XI. PRAYER FOR RELIEF

Accordingly, Plaintiff respectfully requests that:

165. The Court determine that this action may be maintained as a class action under Rule 23(a), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure, and direct that reasonable notice of this action, as provided by Rule 23(c)(2) of the Federal Rules of Civil Procedure, be given to each and every member of the Classes;

166. That the unlawful conduct, contract, conspiracy, or combination alleged herein be adjudged and decreed:

- (a) A per se violation of Section 1 of the Sherman Act;
- (b) An unreasonable restraint of trade or commerce in violation of Section 1 of the Sherman Act;
- (c) An unlawful combination, trust, agreement, understanding and/or concert of action in violation of the state antitrust and unfair competition and consumer protection laws as set forth herein; and
- (d) Acts of unjust enrichment by Defendants as set forth herein.

167. Plaintiff and the members of the Damages Class recover damages, to the maximum extent allowed under such laws, and that a joint and several judgment in favor of Plaintiff and the

1 members of the Damages Class be entered against Defendants in an amount to be trebled to the
2 extent such laws permit;

3 168. Plaintiff and the members of the Damages Class recover damages, to the maximum
4 extent allowed by such laws, in the form of restitution and/or disgorgement of profits unlawfully
5 gained from them;

6 169. Defendants, their affiliates, successors, transferees, assignees and other officers,
7 directors, partners, agents and employees thereof, and all other persons acting or claiming to act on
8 their behalf or in concert with them, be permanently enjoined and restrained from in any manner
9 continuing, maintaining or renewing the conduct, contract, conspiracy, or combination alleged
10 herein, or from entering into any other contract, conspiracy, or combination having a similar
11 purpose or effect, and from adopting or following any practice, plan, program, or device having a
12 similar purpose or effect;

13 170. Plaintiff and the members of the Damages Class be awarded restitution, including
14 disgorgement of profits Defendants obtained as a result of their acts of unfair competition and acts
15 of unjust enrichment;

16 171. Plaintiff and the members of the Classes be awarded pre- and post-judgment
17 interest as provided by law, and that such interest be awarded at the highest legal rate from and
18 after the date of service of this Complaint;

19 172. Plaintiff and the members of the Classes recover their costs of suit, including
20 reasonable attorneys' fees, as provided by law; and

21 173. Plaintiff and members of the Classes have such other and further relief as the case
22 may require and the Court may deem just and proper.
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1 **XII. DEMAND FOR JURY TRIAL**

2 Plaintiff demands a trial by jury, pursuant to Federal Rule of Civil Procedure 38(b), of all
3 issues so triable.

4 Dated: October 17, 2019

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